

AGENDA BILL APPROVAL FORM

Agenda Subject Ordinance No. 6241 "Piano, LLC" Rezone Application No. (REZ07-0034)		Date: May 12, 2009		
Department: Planning, Building, & Community	Attachments: Ordinance No. 6241, Exhibit List	Budget Impact: NA		
Administrative Recommendation: City Council introduce and adopt Ordinance No. 6241 Background Summary: On December 17, 2007, a request was submitted to the City of Auburn by Piano LLC, for approval to rezone a 4.75 acre parcel from R1, Single Family Residential District to R3, Duplex Residential District. The property is located northeast of the intersection of Oravetz Road and Lakeland Hills Way SE and is identified as King County Assessor's Parcel No. 3121059064. At this time, the applicant does not have a specific development proposed for this parcel. On April 6, 2009 the Hearing Examiner issued a recommendation to City Council for approval of the proposed rezone with the following condition: 1. Based on the comments received during the public comment period and other information submitted with this rezone request, a Final SEPA Mitigated Determination of Non-Significance (MDNS) was issued by the responsible SEPA Official on January 14, 2009. The MDNS included three conditions of approval to mitigate potential impacts of the proposed rezone request. Compliance with these conditions is required for this rezone to be approved. In accordance with ACC 18.66.170, the City Council upon its review of the record, may 1. Affirm the Hearing Examiner recommendation; 2. Remand the recommendation to the Hearing Examiner; or 3. Schedule a closed record public hearing before the City Council. Staff is recommending the Council affirm the Examiner's recommendation and adopt Ordinance No. 6241. W0518-5 O3.5 REZ07-0034				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> Reviewed by Council & Committees: <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input checked="" type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. <input type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </td> <td style="width: 50%; vertical-align: top; border: none;"> Reviewed by Departments & Divisions: <input checked="" type="checkbox"/> Building <input type="checkbox"/> Cemetery <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Fire <input type="checkbox"/> Legal <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </td> </tr> </table>			Reviewed by Council & Committees: <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input checked="" type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. <input type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input type="checkbox"/> Public Works <input type="checkbox"/> Other _____	Reviewed by Departments & Divisions: <input checked="" type="checkbox"/> Building <input type="checkbox"/> Cemetery <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Fire <input type="checkbox"/> Legal <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources
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Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____				
Councilmember: Norman		Staff: Baker		
Meeting Date: May 18, 2009		Item Number: VIII.A.1		

List of Exhibits

Exhibit 1	Staff Report
Exhibit 2	Master Land Use Application
Exhibit 3	Notice of Application & Proposed Mitigated Determination of Non-Significance (MDNS)
Exhibit 4	Notice of Public Hearing*
Exhibit 5	Affidavits & Confirmation of Publication for Legal Notice*
Exhibit 6	Rezone Map
Exhibit 7	Comprehensive Plan Map
Exhibit 8	Final Mitigated Determination of Non-Significance (MDNS)
Exhibit 9	SEPA Checklist*
Exhibit 10	Geotechnical Report by Associated Earth Sciences (April 8, 2008)*
Exhibit 11	Independent Review Letter of Geotechnical Report by ZZA Terracon received May 30, 2008*
Exhibit 12	Updated Independent Review Letter of Geotechnical Report by ZZA Terracon received June 16, 2008*
Exhibit 13	Comment Letter Received Feb. 29, 2008 from Investco Corporation
Exhibit 14	Comment Letter Received Mar. 3, 2008 from Mel Johnson
Exhibit 15	Comment Letter Received Mar. 5, 2008 from Molly Lawrence, Gordon Derr,
Exhibit 16	Letter Requesting Additional Information dated Mar. 11, 2008 from City of Auburn
Exhibit 17	Comment Letter on Proposed MDNS Received Aug. 1, 2008 from the Applicant, Jason Naden, Piano LLC
Exhibit 18	Chapter 14 Comprehensive Plan Map – Auburn Comprehensive Plan (as submitted at hearing by applicant)
Exhibit 19	Correspondence from Applicant & City via e-mail (as submitted at hearing by applicant)
Exhibit 20	Reconsideration Request/Decision dated April 24, 2009

*** Exhibit is not included in the packet but is available for review upon request.**

ORDINANCE NO. 6241

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, APPROVING A REZONE AS REQUESTED BY PIANO LLC, A LIMITED LIABILITY CORPORATION, OF A 4.75-ACRE PARCEL FROM R-1 (SINGLE-FAMILY RESIDENTIAL) TO R-3 (DUPLEX RESIDENTIAL)

WHEREAS, Application No. REZ07-0034, submitted December 17, 2007, was submitted to the City of Auburn, Washington, by Piano LLC, for approval to rezone a 4.75 acre parcel from R1, Single Family Residential District to R3, Duplex Residential District; and

WHEREAS, the property is located NE of the Intersection of Oravetz Road and Lakeland Hills Way SE within the southwest quarter of Section 31, Township 21 North, Range 5 East, W.M. King County, Washington, and is identified as King County Assessor's Parcel No. 3121059064; and

WHEREAS, on March 25, 2009, the Hearing Examiner conducted a duly noticed public hearing on the matter and on April 6, 2009, issued a decision recommending the City Council approve the rezone; and

WHEREAS, on April 13, 2009, the City of Auburn received a timely Request for Reconsideration from the applicant, asserting that the Examiner did not identify a document entered at the hearing by the applicant into the exhibit list of the Examiner's recommendation; and

WHEREAS, on April 24, 2009, the Hearing Examiner issued an Order on Reconsideration, confirming the applicant's request to include a document that was

submitted at the public hearing and inadvertently left out of the exhibit list in the decision of April 6, 2009; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. Approval. The request to rezone approximately 4.75 acres from R-1 (Single-Family Residential) to R-3 (Duplex Residential) is hereby APPROVED, subject to the conditions herein.

Section 2. Adoption of Hearing Examiner's Decision. The City Council adopts the Hearing Examiner's Findings of Fact, Conclusions and Recommendation dated April 6, 2009, attached hereto and incorporated by reference, for the property located NE of the Intersection of Oravetz Road and Lakeland Hills Way SE within the southwest quarter of Section 31, Township 21 North, Range 5 East, W.M. King County, Washington, and is identified as King County Assessor's Parcel No. 3121059064 as identified in Exhibit "A" attached hereto and incorporated by reference, to wit:

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is Piano, LLC.
2. Hearing. The Hearing Examiner conducted a hearing on the application at 3:00 p.m. at Auburn City Hall in the Council Chambers on March 25, 2009.

Substantive:

3. Site/Proposal Description. The applicant has applied for the rezoning of a 4.75-acre parcel from R-1 (Single-Family Residential) to R-3 (Duplex Residential). The rezone will enable more than twice the currently allowed density. Nothing but single-family residences are allowed in the R-1 zoning district. Single-family residences and duplexes are allowed outright within the R-3 zoning district. Multiple duplexes on a single lot and multi-family residential structures are allowed upon approval of a conditional use permit in the R-3 zoning district. There is no development proposal associated with this rezone request at this time.

The site is currently vacant with forested areas throughout. It is bordered by Oravetz Road on the west and Lakeland Hills Way on the east. Both roads are classified as minor arterials. The site comprises of a roughly rectangular-shaped parcel, which slopes moderately to steeply upward to the south and east from Oravetz Road Southeast. The central section of the site contains a benched area. From the benched area, the site slopes steeply upwards to Lakeland Hills Way Southeast within northern and central sections and gently upward within the southern sections of the site. The steep slopes along Oravetz Road Southeast are generally inclined at approximately 70-percent grades, while the steep slopes within the central section of the site below Lakeland Hills Way Southeast are inclined at approximately 40- to 60-percent grades. Some localized areas of the slopes above the benched area are inclined at grades of approximately 80 to 90 percent. The slopes along Oravetz Road Southeast and within the central portion of the site appear to have been modified by past grading activity.

4. Characteristics of the Area. The general vicinity of the subject site is characterized as land transitioning from less urban to a more urban development pattern. The Lakeland Hills Planned Unit Development is a few hundred feet to the east. Properties adjacent to the subject site, particularly along the north and east edges, are characterized as developed to higher urban densities that are consistent with the City of Auburn's zoning and comprehensive plan designations. A high school and an elementary school are located north and west of the site on the west side of Oravetz Road.

5. Adverse Impacts. The primary issue of concern for the subject property is its steep slopes. As noted by staff, steep-slope issues have undergone extensive review by both the applicant's geotechnical consultant (Associated Earth Sciences, Inc.) and a peer-review consultant (ZZA-Terracon). The last written documentation from the peer-review consultant (Exhibit 12) concludes that the proposed rezone may be at odds with the AMC--Specified Prohibition of Class IV Land Slide Hazard Area alteration since development of the site for multi-family housing would [sic] the likely require alteration of the Class IV Landslide Hazard Areas.

However, staff and the applicant's attorney testified that the peer-review consultant has subsequently concluded that the property is not Class IV hazard area, but rather a Class II hazard area and that as such, the proposed rezone is consistent with the geological constraints of the property. This testimony is consistent with the MDNS (Exhibit A) for the project, where it is stated at Page 3 that the peer-review engineer has agreed that the project should be classified as a Class II/Moderate Hazard Landslide Hazard Area. This evolution in the assessment of geological hazard apparently arises from the fact that the original Class IV designation was based solely upon topographical conditions (the steep slopes at the site). Whereas a more in-depth investigation revealed that the soils and groundwater characteristics of the site merited a less hazardous designation. Given these factors, the Examiner finds that the proposed rezone is consistent with the geological constraints of the site.

A letter in opposition was also received (Exhibit 14) by Mel Johnson. Mr. Johnson expressed concerns over traffic, visual impact, stormwater and "zoning continuity." Mr. Johnson notes that the Lakeland Hills Way and A Street intersections are already highly

congested, and there are already many more areas in Lakeland Hills that are still to be developed. Staff comment on existing traffic conditions and capacity of the road network would have been helpful in evaluating this concern. However, the roads serving this project are arterials and, consequently, no development on the subject site will be allowed under the Growth Management Act that lowers the level of service of these arterials below City-adopted standards. Further, as noted in the staff report, all traffic impacts will be mitigated at the time of development. Given these safeguards, the Examiner finds that transportation will be adequately addressed.

As to stormwater, the City has extensive regulations that address stormwater impacts. These regulations prohibit any net increase in discharge of stormwater offsite. The City's existing regulations adequately address stormwater.

As to visual impact, there is little that can legally be done to address visual impacts in permit review, given the lack of specific standards to address the situation. However, Condition No. 1 of the MDNS (Exhibit 8) does require the applicant to "minimize" visual impacts as viewed from surrounding parcels in Oravetz Road and Lakeland Hills Way Southeast.

As to "zoning continuity," Mr. Johnson argues that there is already sufficient high-density development in the surrounding area. The proximity of other high-density development is actually an argument in favor of the proposed rezone, since this ensures the further compatibility of adjoining use. Also, the Growth Management Act encourages high-density development within urban growth areas such as the City of Auburn.

There are no other adverse impacts discernible from the record. The Examiner finds that the proposed rezone will not create any material or significant adverse impacts.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. ACC 18.68.030(B)(1)(a) grants the Hearing Examiner with the authority to review and make a recommendation on rezone requests to the City Council if the planning director determines that the rezone requests are consistent with the comprehensive plan. The planning director has determined that the rezone request is consistent with the comprehensive plan. The Comprehensive Plan Land Use Map designation for the property is Moderate Density Residential. Page 14-6 of the City of Auburn Comprehensive Plan provides that the R-3 zone implements this zoning designation.

Substantive:

2. Zoning Designation. The property is zoned R-1, Single-Family Residential.

3. Review Criteria and Application. Chapter 18.68 ACC does not provide any specific review criteria for site specific rezones. However, Washington appellate courts have imposed some criteria themselves, requiring that the proponents of a rezone must establish that conditions have substantially changed since the original showing and that the rezone must bear a substantial relationship to the public health, safety, morals or welfare. See *Ahmann-Yamane, LLC v. Tabler*, 105 Wn. App. 103, 111 (2001).

However, no change in circumstances is necessary for rezones that implement a comprehensive plan. *Id.* at 112.

In this case a change in circumstances is not necessary since the rezone does implement the comprehensive plan. As previously discussed, the current zoning designation for the property is inconsistent with the underlying comprehensive plan designation. The proposed rezone is consistent with the underlying comprehensive plan designation. Even if the changed circumstances criterion did apply, this project would satisfy it by the intense development that has occurred in the surrounding area.

As noted in detail in the staff report, the proposed rezone also is consistent with and implements other Comprehensive Plan policies. The site is served by minor arterials, is in an area characterized by high-density development, and is located within an urban growth area. All of these factors support the rezone to a higher density. Further, the City must allow a rezone to either the proposed R-3 district or the R-MHP (Residential Manufactured Home Park District) in order to provide for consistency between the Comprehensive Plan land use map and the zoning map as required by the Growth Management Act ("GMA"), Chapter 36.70A RCW.

The project bears a substantial relationship to the public health, safety and welfare. It promotes high density infill development within urban growth areas as encouraged by the GMA. It serves as a transition area to institutional and high-density uses. The density is also compatible with those of the adjoining single family and other uses.

4. Decision. The Hearing Examiner recommends approval of REZ07-0034, subject to the following condition:

Based on the comments received during the public comment period and other information submitted with this rezone request, a Final SEPA Mitigated Determination of Non-Significance (MDNS) was issued by the responsible SEPA Official on January 14, 2009. The MDNS included three conditions of approval to mitigate potential impacts of the proposed rezone request. Compliance with these conditions is required for this rezone to be approved.

Section 3. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. Recording. Upon the passage, approval and publication of this Ordinance as provided by law, the City Clerk of the City of Auburn shall cause this Ordinance to be recorded in the office of the King County Auditor.

Section 5. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 6. Effective Date. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication, as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM



Daniel B. Heid
City Attorney

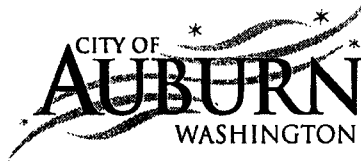
PUBLISHED: _____

EXHIBIT A

King County Tax Parcel No. 3121059064

Legal Description

POR OF GL 3 IN SEC 31-21-5 LY BETWEEN LAKE LAND HILLS WY N & ORAVETZ
RD AS PER REC # 9302161342 & 9805281842



AGENDA BILL APPROVAL FORM

Agenda Subject Public Hearing Application No. REZ07-0004, Piano LLC, Rezone		Date: 3/20/2009
Department: Planning, Building and Community	Attachments: Please refer to Exhibit List, below	Budget Impact: NA
Administrative Recommendation: Hearing Examiner to recommend the City Council grant approval of the requested change in zoning based upon the Findings of Fact, Conclusions as outlined.		
Background Summary: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>OWNER/APPLICANT:</p> <p>Douglas Jackson Piano LLC 1414 31st Ave S. Seattle, WA 98144</p> <p>Molly Lawrence Gordon Derr, LLP 2025 1st Ave, Suite 500 Seattle, WA 98121</p> </div> <div style="width: 50%;"> <p>REQUEST: Proposed rezone of approximately 4.76 acres from R1, Single Family Residential District to R3, Two Family Residential District. There is no development proposal associated with this rezone request at this time.</p> <p>LOCATION: The property is located at NE corner of the Intersection of Oravetz Road and Lakeland Hills Way SE. The site is located within the southwest quarter of Section 31, Township 21 North, Range 5 East, W.M. King County, Washington. Assessor's Parcel Number: #3121059064.</p> <p>EXISTING ZONING: R1, Single Family Residential.</p> <p>COMPREHENSIVE PLAN DESIGNATION: Moderate Density Residential.</p> <p>SEPA STATUS: A Final Determination of Non-Significance (SEP07-0034) was issued on January 14, 2009 for the proposed Rezone.</p> </div> </div>		
Reviewed by Council & Committees: <div style="display: flex;"> <div style="flex: 1;"> <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input checked="" type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. </div> <div style="flex: 1;"> Council Committees: <input type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </div> </div>		Reviewed by Departments & Divisions: <div style="display: flex;"> <div style="flex: 1;"> <input checked="" type="checkbox"/> Building <input type="checkbox"/> Cemetery <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Fire <input type="checkbox"/> Legal <input checked="" type="checkbox"/> Public Works </div> <div style="flex: 1;"> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div>
Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____		
Councilmember:		Staff: Hankins
Meeting Date: March 25, 2009		Item Number:

Exhibit 1
Number of Pages 10

EXHIBIT LIST

Exhibit 1	Staff Report
Exhibit 2	Completed Application
Exhibit 3	Notice of Application & Proposed Mitigated Determination of Non-Significance (MDNS)
Exhibit 4	Notice of Public Hearing
Exhibit 5	Affidavits & Confirmation of Publication for Legal Notice
Exhibit 6	Rezone Map
Exhibit 7	Comprehensive Plan Map
Exhibit 8	Final Mitigated Determination of Non-Significance (MDNS)
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Exhibit 16	Letter Requesting Additional Information dated Mar. 11, 2008 from City of Auburn
Exhibit 17	Comment Letter on Proposed MDNS Received Aug. 1, 2008 from the Applicant, Jason Naden, Piano LLC

FINDINGS OF FACT

1. Proposed rezone of approximately 4.76 acres from R1, Single Family Residential District to R3, Two-Family Residential District. In their application, the applicant states that the rezone to R3, Two-Family Residential District will allow greater flexibility in density requirements than R1, and thus allows more variety and creativity in site design and housing types, while protecting the natural features of the site. There is no development proposal associated with this rezone request at this time.
2. The Comprehensive Plan designation, zoning designation and land uses of the subject site and surrounding properties are:

	Zoning	Comprehensive Plan	Existing Land Use
Site	R-1 Single Family Residential	Moderate Density Residential	Vacant
North	P-1 Public Use District	Public/Quasi Public	Senior High School
South	R-1 Single Family Residential	Moderate Density Residential	Low/Moderate Density Single Family Residential
East	PUD - Lakeland Hills South Single Family Residential	Special Plan Area (PUD) Single Family Residential	Low/Moderate Density Single Family Residential
West	R-1 Single Family Residential	Public/Quasi Public	Elementary School

3. As noted above, the site is zoned R1, Single Family Residential. The general vicinity of the subject site is characterized as land transitioning from less urban to a more urban development pattern. The properties adjacent to the subject site, particularly along the north, and east edge is characterized as developed to higher urban densities which are consistent with the City of Auburn zoning and Comprehensive Plan designations. A high school and elementary school are located north and west of the site on the west side of Oravetz Road SE.
4. The property lies within an Urban Growth Area designated under the State Growth Management Act. Development is encouraged in the Urban Growth Area where adequate public facilities and services exist or can be provided in an efficient manner. The City of Auburn Comprehensive Plan Land Use Map designates the site as Moderate Density Residential 6-10 units per acre. The area east of the site is designated as High Density Residential, 10-20 units per acre. To the south of the perimeter of the subject site, areas are designated Moderate Density Residential, 6-10 units per acre. To the west and north of the perimeter of the subject site, areas are designated as Public & Quasi Public.
5. The allowed gross density of the site under the existing R1 Single Family Residential zoning is approximately 26 dwelling units (8,000 square foot minimum lots size or 5.4 dwelling units per acre). With the proposed rezone to R3 Two-Family (Duplex) Residential District the allowed gross density is increased to approximately 41 dwelling units (5,000 square foot minimum lot size or 8.6 dwelling units per acre) for single family development. Pursuant to Section 18.16.030 ACC, duplex and multifamily development are allowed via a conditional use permit in the R3 zoning district, whereas single family development is allowed outright.
6. A Geotechnical Investigation report was completed by Associated Earth Sciences, Inc, April 8, 2008, for the subject site and submitted with the environmental checklist by the applicant. The report also considered a previous preliminary geotechnical study by AESI, September 1998, for the same site. The City authorized an independent review of the applicant's report by ZZA Terracon which the City received on May 30, 2008. Both the applicant's and the independent reports were found to be consistent with each other and are attached as exhibits.
7. The report characterizes the site as currently vacant with forested areas scattered throughout the site. The property comprises a roughly triangular shaped parcel, which slopes moderately to steeply upward to the south and east from Oravetz Road SE. The central section of the site contains a benched area. From the bench area, the site slopes steeply upward to Lakeland Hills Way SE within the northern and central sections and gently upward within the southern sections of the site. The steep slopes along Oravetz Road SE are generally inclined at approximately 70 percent grades, while the steep slopes within the central section of the site below Lakeland Hills Way SE are inclined at approximately 40 to 60 percent grades. Some localized areas of the slopes above the benched area are inclined at grades of approximately 80 to 90 percent. The slopes along Oravetz Road SE and within the central portion of the site appear to have been somewhat modified by past grading activity.
8. Based on the geotechnical reports, a portion of the site is classified as a geological hazardous area as defined in ACC Section 16.10.080.G.2.b (Landslide Hazard Areas). Based on the technical reports, this geological hazardous feature is defined as a Class II/Moderate Hazard landslide hazard area.
9. Based on the geotechnical reports, a portion of the site is also classified as a different potential geologically hazardous area pursuant to the City's Critical Area regulations contained within ACC Section 16.10.080.G.1 (Critical Erosion Hazard Areas).

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10. The site has street frontage on both Lakeland Hills Way SE and Oravetz Road SE. Upon future development direct access will most likely be on the north side of the property from Oravetz Road SE. Road and street frontage improvements to the City of Auburn standards will be required at the time of future development. These improvements include but are not limited to curb, gutter, sidewalks, planting strips, street lighting, paving, necessary right-of-way dedications, and public stormwater conveyance. While there will not be impacts on the transportation system at the time of rezoning, if approved density will be increased and a corresponding increase in vehicle trips on the street network is likely. The impacts of such trips will be mitigated by collection of traffic impact fees per ACC, and site specific frontage improvements determined appropriate at the time the property is developed
11. The streets bordering the site; Lakeland Hills Way SE and Oravetz Road SE are classified as Minor Arterials in accordance with the City of Auburn Comprehensive Transportation Plan. Minor Arterials interconnect and augment the principal arterial system by providing access to and from the principal arterials and freeways. They serve moderate length trips at a somewhat lower mobility than principal arterials, distribute traffic to smaller geographic areas than principal arterials, and should not enter neighborhoods. They are typically constructed to accommodate four lanes of traffic with speed limits of 30 to 35 mph.
12. King County Metro provides transit service in the vicinity of the project site including Lakeland Hills Way SE. Upon future development demand for bus service will increase. METRO will be contacted at the time of development of the site for any requested improvements to bus stops in the area.
13. The site is served by the City of Auburn for sanitary sewer. A public sanitary sewer system will be provided with any subsequent development resulting from this proposed rezone. The applicant will be required to submit plans for review and approval prepared in accordance with City of Auburn's standards.
14. A stormwater system will be provided with any subsequent development resulting from this proposed rezone. The applicant will be required to complete a drainage analysis and submit drainage plans prepared in accordance with City of Auburn's standards.
15. The site was annexed to the City of Auburn in 2003 by Ordinance #5774. The existing zoning designation of R1, Single Family Residential was established upon annexation. Subsequently, the City of Auburn Comprehensive Plan Land Use Map designation of Moderate Density Single Family Residential 6-10 units per acre was also established at that time.
16. Notice of the public hearing on the rezone was published in the Seattle Times on March 13, 2009. The site was posted at one location and adjacent property owners within 300 feet of the property were notified of this public hearing by mail in compliance with City ordinances.
17. On January 20, 2009, the SEPA Responsible Official issued a Final Mitigated Determination of Nonsignificance (MDNS) for the Piano LLC Rezone (File No. SEP07-0034). The Responsible Official considered whether other regulations would mitigate the identified adverse impacts, and concluded that mitigation measures are necessary to reduce or avoid reasonably anticipated future impacts not sufficiently mitigated by existing regulations.

Two comment letters were initially received on the proposed MDNS. The first from Investco, Inc indicates support of the proposed rezone request and MDNS. The second from Mel Johnson, an Auburn resident was submitted in opposition to the proposed rezone. Generally, Mr. Johnson's comments concerned traffic impacts on Lakeland Hills Way/A St. SE, visual impacts of future

development to surrounding properties by removing the existing trees and vegetation, stormwater impacts to the White River, and zoning continuity by permitting additional density on the site. Further, the applicant submitted two separate comment letters on the proposed MDNS. The first dated Mar. 3, 2008 requested the City review/revise Condition #1 of the MDNS. The second letter dated Aug. 1, 2008 is regarding the geotechnical analysis related to the proposed rezone. Copies of these letters are included as part of the record for this Rezone and are attached as exhibits.

Upon conclusion of the comment period, Staff re-evaluated the proposed MDNS based on the comments received. At that time it was determined that additional information was necessary before the final SEPA determination could be issued. Specifically, it was determined that information in reference to topographical features and potential geologic hazards located on the property would need to be considered to finalize SEPA and to make a recommendation on the request for the rezone. It was also established at that time that upon review of the new information, the City would determine if additional conditions associated with the SEPA decision would be necessary to ensure that anticipated environmental impacts could be mitigated. This request for additional information is included with this report as Exhibit #16.

As requested, the applicant provided a Geotechnical Report prepared by Associated Earth Sciences dated April 8, 2008. This report analyzed the existing site conditions and the City's Critical Areas Ordinance. Subsequently, the City sent the report out for an independent review by another Geotechnical Engineering firm. The results of this independent review were determined to be consistent with the applicant's consultant. Upon conclusion of the geotechnical information being provided, the applicant and staff continued to work collectively on finalizing the SEPA determination for the proposed rezone.

EXISTING POLICIES, REGULATIONS, & CONCLUSIONS

ACC Chapter 18.68 provides certain criteria for approval of a rezone:

1. The rezone must be consistent with the Comprehensive Plan.

The City of Auburn Comprehensive Plan, through its goals and policies presents the City's vision for the future growth and development of the community. The Land Use Element's goals and policies guide decisions about the character of development within Auburn and is implemented by the Auburn City Code. These codes are in place to protect important natural systems and critical areas, and to establish parameters for new development in order to protect the public health, safety and general welfare. This rezone application was reviewed for compliance with the zoning code, the critical areas ordinance, and Chapter 16.06 ACC. In addition, impacts from the proposed rezone were considered under an environmental review (SEP07-0034). A Mitigated Determination of Non-Significance (MDNS) was issued on January 20, 2009 which included mitigation conditions for the visual impact of the site as viewed from surrounding parcels, vegetation management, and mitigation for future development. Staff has found that as conditioned through the MDNS, the rezone application is consistent with applicable City Codes and with the goals and policies of the Comprehensive Plan.

The Land Use Element contains a land use plan map that illustrates the location of future land uses and residential densities within the City. The designation for this site at this time is Moderate Density Residential which allows a density of 6-10 units per acre. The density for the proposed rezone is an acceptable level to support urban services, and supports projected population growth and the changing demographics of the City (LU-17, LU-18). The proposed R3, Two-Family Residential District is specified by the comprehensive plan as a district appropriate to implement the Moderate

Density Comprehensive Plan designation (Comprehensive Plan, page 14-6) The proposed rezone would increase consistency of the site's zoning to the site's comprehensive plan designation.

The goals and policies of the land use element and housing element generally support the proposed rezone. The location is near existing urban services and infrastructure. The plan supports the development of close-in vacant or underdeveloped properties which further limits urban sprawl on the edges of the planning area. The increased density allowed under this rezone request will encourage compact urban development, and will provide protection of critical areas existing on the site (LU-23, LU-29).

In accordance with the Comprehensive Plan (LU-37), the location of moderate density units shall be encouraged as a buffer between single family areas and more intense uses. In this case, the site is bordered to the west and north by an elementary school, senior high school and an athletic stadium/field. To the east and south is existing moderate density single family residential developed as a Planned Unit Development (PUD). To the southeast are a church and a significant roadway designated as a principal arterial (A St. SE) according to Auburn's Comprehensive Transportation Plan. The comprehensive plan also states that such buffering is appropriate along arterials where existing platting prevents effective lot layout for single family units. This site is bordered by two minor arterials (Oravetz Rd. SE, & Lakeland Hills SE) pursuant to Auburn's Comprehensive Transportation Plan. These two frontages in combination with the topography on site, potentially present a challenge to develop the site with typical low density single family residential units. Further, the design and siting of moderate density units are controlled through the R-3 zoning classification by requiring a conditional use permit to be approved for development of any dwelling units other than single family residential or one duplex. The CUP process provides a mechanism to reduce or prevent impacts of increased number of dwelling units to adjacent properties or roadways and to ensure that adequate buffering is considered.

By compliance with the zoning code, the Critical Areas Ordinance, the MDNS for the proposed rezone, and other applicable development regulations, future development of this site will be consistent with the Comprehensive Plan. Environmental Policies EN-70 and EN-71 describe the importance of recognizing the role played by natural features and systems in the environmental quality and livability of the community as well as the need to protect natural resources and their benefits. Further, the increase in density that can be realized through this rezone is appropriate given the identified geotechnical constraints of the site.

Due to the unique topographical features associated with this site, future development of the property will be limited immediately adjacent to these areas. Any proposed site development will be subject to the requirements of the City's Critical Areas Ordinance. The significant slope features will likely decrease the number of lots and/or dwelling units allowed on the site and will require any improvements to be set back from these areas. The regulated slopes and any required buffers will remain undisturbed upon site development. Pursuant to Chapter 16.10 ACC, the primary goal of regulating geologic hazards are to avoid and minimize potential impacts to life and property by regulating and/or limiting land uses where necessary, and to conduct appropriate levels of analysis and ensure sound engineering and construction practices to address identified hazards. The environmental constraints of the site will result in a natural topographical area that will be preserved and fit within the character of the surrounding development in the area.

The Growth Management Act requires consistency between land use and transportation planning. As noted, the Land Use Plan identifies the area of the rezone as Moderate Density Residential. Pursuant to Section 12.64.A.030 ACC, upon future development of the site, the City's Public Works Department will identify specific public right-of-way improvements that are necessary to mitigate the

impacts of site development. Construction or provision of those improvements in the manner specified by the city engineer shall be a condition of permit approval. Improvements will likely include; street lighting, sidewalks, concrete curbs and gutters, storm drainage systems, street landscaping and appurtenances, traffic control devices, and dedication of public right-of-way.

Finally, this site provides good access for non-motorized means of transportation. The site is adjacent to an extensive network of pedestrian friendly trails, sidewalks, and other planning features that provide access to and from the site.

Below is a summary of the goals, policies, and objectives identified within the Comprehensive Plan that pertain to this rezone request:

1. Residential densities in areas designated for single family residential use should be no greater than 6 units per acre. They should also be within areas with good transit availability which is measured as 1/4 mile or less to a route with at least half hour service. Accessory dwelling units should be permitted to allow increased densities. The bulk of the single family residential community should be developed at a density of between 4 and 6 dwelling units per acre. (Policy LU-17, ACP)
2. Residential densities in areas designated for multiple family development should not exceed 20 units per acre. Multiple family densities should generally decrease with proximity to single family areas. Multiple family densities may exceed 20 units per acre provided they are within walking distance (1/4 mile) of regional transit facilities or are targeted to populations not requiring outdoor recreation areas and having low private automobile usage (e.g. elderly housing). These targeted developments should be located in close proximity to shopping, medical and public transportation services. (Policy LU-18, ACP)
3. Siting of moderate density units shall be encouraged as a buffer between single family areas and more intense uses. Such buffering is appropriate along arterials where existing platting prevents effective lot layout for single family units. Also, such buffering is appropriate between single family areas and commercial and industrial uses. Where there are established single family areas, the design and siting of moderate density units shall be controlled to reduce potential conflicts and to en-sure buffering of uses. Higher density units are not to be considered such a buffer. (Policy LU-37, ACP)
4. Residential development should be related to topography, circulation, and other amenities, as guided by policies of this Plan. (Policy LU-21, ACP)
5. The development of new neighborhoods should be governed by development standards which allow some flexibility. Flexibility should be considered to encourage compact urban development, to provide protection of critical areas, and resource lands (including, but not limited to, agricultural resource lands, cultural resources, forest resource lands, mineral resource areas, hillsides or wetlands), and to facilitate non-motorized transportation. (Policy LU-23, ACP)
6. Development design should utilize and preserve natural features, including, but not limited to, topography and stands of trees, to separate incompatible land uses and densities. (Policy LU-29, ACP)
7. Development codes shall be modified to allow the City to require that landscaped buffers, natural area preservation or other measures are utilized to separate new residential developments from incompatible uses and major streets. These buffers should permit access between the residential area and the major street by pedestrians and bicyclists. (Policy LU-31, ACP)

8. The City should adopt innovative zoning provisions which ease the development of vacant parcels within existing neighborhoods while requiring the new development to fit the context of the existing buildings in the surrounding area. (Policy HO-27, ACP)
9. The City will encourage varied and human-scaled building design that provides a visual interest to pedestrians, compatibility with historic buildings or other neighborhood structures, and enhances the streetscape. (Policy HO-33, ACP)
10. Conserve developable land and natural resources through a variety of housing types, conservation and site planning techniques that achieve the maximum housing potential and passive energy use of a particular site. (Policy HO-34, ACP)
11. The City shall seek to ensure that land not be developed or otherwise modified in a manner which will result in or significantly increase the potential for slope slippage, landslide, subsidence or substantial soil erosion. The City's development standards shall dictate the use of Best Management Practices to minimize the potential for these problems. (Policy EN-69, ACP)
12. Where there is a high probability of erosion (see Map 9.6), grading should be kept to a minimum and disturbed vegetation should be restored as soon as feasible. The City's development standards shall dictate the use of Best Management Practices for clearing and grading activity. (Policy EN-70, ACP)
13. The City shall consider the impacts of new development on hazards associated with soils and subsurface drainage as a part of its environmental review process and require any appropriate mitigation measures. (Policy EN-71, ACP)
14. The City shall consider the impacts of new development on Class I and Class III landslide hazard areas (Map 9.7) as part of its environmental review process and require any appropriate mitigating measures. The impacts of the new development, both during and after construction, on adjacent properties shall also be considered. (Policy EN-73, ACP)
15. Auburn will seek to retain areas with slopes in excess of 40 percent as primarily open space areas in order to protect against erosion and landslide hazards and to limit significant removal of vegetation to help conserve Auburn's identity within the metropolitan region. Slopes greater than 15 percent with zones of emergent water (springs or ground water seepages) and all slopes with mappable landslide potential identified by a geotechnical study shall be protected from alteration. (Policy EN-74, ACP)
16. New development within Class I and Class III landslide hazard areas (Map 9.7) shall be designed and located to minimize site disturbance and removal of vegetation, and to maintain the natural topographic character of the site. Clustering of structures, minimizing building footprints, and retaining trees and other natural vegetation, shall be considered. (Policy EN-76, ACP)

Comprehensive Transportation Plan

5.2 Street System

Objective: Functional Classification

To provide an integrated street network of appropriate classes of streets designed to facilitate different types of traffic flows and access needs.

Policy TR-51 The city street system is made up of Arterials, Collectors, and Local Streets

Policy TR-52 The Functional Roadway Classifications Map will serve as the adopted standard for identifying classified streets in the City of Auburn and the potential annexation areas.

Objective: Arterials

Policy TR-58 The City has two classes of arterials, as follows.

a. Principal Arterials convey traffic along commercial or industrial activities, and provide access to freeways.

b. Minor Arterials convey traffic onto principal arterials from collector and local streets. They place slightly more emphasis on land access and offer a lower level of mobility than principal arterials. Minor arterial streets are typically constructed to accommodate four lanes of traffic.

- 2. The rezone must be initiated by someone other than the City in order for the Hearing Examiner to consider the request.**

This rezone request was initiated by the owner of the property Piano, LLC as identified in the application submitted on December 17, 2007.

- 3. Any changes or modifications to a rezone request made by either the Hearing Examiner or City Council will not result in a more intense zone than the one requested.**

Staff is not recommending any changes or modifications to the request.

In addition, the Washington State Supreme Court has identified other general rules for rezone applications (see *Parkridge v. Seattle*, 89 Wn.2d.454; 573 P.2d 359 (1978)):

- 1. Conditions in the area must have changed since the original zoning was established.**

Since the original R1, Single Family zoning of this site was established at the time of annexation to the City of Auburn in 2003, there have been significant changes in the general area. The adjacent Lakeland Hills South PUD has continued to significantly expand and develop with new residential and commercial uses and related infrastructure and at this time is nearing build-out.

- 2. The proposed rezone must bear a substantial relationship to the general welfare of the community.**

The proposed change in zoning will be compatible with the surrounding uses and zoning classifications. Properties to the south and east are zoned R-1, Single Family Residential, and Planned Unit Development (PUD) - Lakeland Hills. These areas are currently developed with Low to Moderate Density Single Family Residential. Property to the west and north are zoned for institutional uses and are currently developed with an elementary school and a high school.

The rezone will allow for future development of the area in a manner consistent with Section 18.16.010 ACC. This section states the R-3, Two-Family residential zones are intended to permit a limited increase in population density in those areas to which this classification applies by permitting two dwelling units on a minimum size lot while at the same time, by means of the standards and requirements set forth in this chapter, maintaining a desirable family living environment by

establishing minimum lot areas, yards and open spaces. A related consideration is to provide a transition between single-family areas and other intensive designations or activities which reduce the suitability for single-family uses.

When compared to adjacent single family and institutional land uses developed in the area, the proposed rezone is compatible with the surrounding area. Further, if the applicant decides to pursue developing the site with a multi-family residential use, a conditional use permit would be required pursuant to Section 18.16.030 ACC. As a conditional use, additional analysis would be provided regarding neighborhood compatibility.

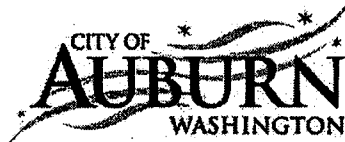
The City has provided adequate public notice of the rezone application and the public hearing.

RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions in the staff report, staff proposes that the Hearing Examiner recommend the Auburn City Council **GRANT** the rezone from R1, Single Family Residential to R3, Two-Family Residential of the approximate 4.76 acre parcel with the following condition:

1. Based on the comments received during the public comment period and other information submitted with this rezone request, a Final SEPA Mitigated Determination of Non-Significance (MDNS) was issued by the Responsible SEPA Official on January 14, 2009. The MDNS included three conditions of approval to mitigate potential impacts of the proposed rezone request. Compliance with these conditions is required for this rezone to be approved.

Staff reserves the right to supplement the record of the case to respond to matters and information raised subsequent to the writing of this report.



Planning, Building, and Community Department

REZ07-0004

MASTER LAND USE APPLICATION – PLANNING APPLICATIONS

Project Name Piano **Date** 12/10/2007

Parcel No(s) 3121059064 **Site Address** (vacant lot)

Legal Description (attached separate sheet if necessary) _____
(see attached sheet)

Applicant Name: Piano LLC Mailing Address: 1414 31st Ave S. Seattle, WA 98144 Telephone and Fax: 206.322.3690/206.322.3407 Email: Douqlasi@magnusllc.com Signature:	
Owner (if more than one attach another sheet) Name: Piano LLC Mailing Address: 1414 31st Ave S. Seattle, WA 98144 Telephone and Fax: 206.322.3690/206.322.3407 Email: Douqlasi@magnusllc.com Signature:	
Engineer/Architecture/Other Name: Not applicable at this time. Mailing Address: Telephone and Fax: Email:	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> RECEIVED DEC 17 2007 PLANNING DEPARTMENT </div>
Description of Proposed Action: Rezone of parcel from R-1 to R-3	

Type of Application Required (Check all that Apply)			
<input type="checkbox"/>	Administrative Appeal*	<input checked="" type="checkbox"/>	Rezone (site specific)* Area Wide
<input type="checkbox"/>	Administrative Use Permit*	<input type="checkbox"/>	Short Plat
<input type="checkbox"/>	Annexation*	<input type="checkbox"/>	Special Exception*
<input type="checkbox"/>	Boundary Line Adjustment	<input type="checkbox"/>	Special Home Occupation Permit*
<input type="checkbox"/>	Comprehensive Plan Amendment (Text or Map)*	<input type="checkbox"/>	Substantial Shoreline Development*
<input type="checkbox"/>	Conditional Use Permit*	<input type="checkbox"/>	Surface Mining Permit*
<input type="checkbox"/>	Critical Areas Variance*	<input type="checkbox"/>	Temporary Use Permit
<input type="checkbox"/>	Development Agreement*	<input type="checkbox"/>	Variance*
<input checked="" type="checkbox"/>	Environmental Review (SEPA)*	*Please note that public notification is required. A separate cost is charged for the signs. City prepares signs but applicant responsible for sign posting.	
<input type="checkbox"/>	Final Plat	<input type="checkbox"/>	
<input type="checkbox"/>	Preliminary Plat*	<input type="checkbox"/>	
<input type="checkbox"/>	PUD Site Plan Approval	<input type="checkbox"/>	
<input type="checkbox"/>	Reasonable Use Exception*	<input type="checkbox"/>	



Planning, Building, and Community Department

**LETTER FROM PROPERTY OWNER GRANTING AUTHORIZATION TO ACT
(A copy of this letter must be submitted for each property owner involved)**

I, Piano LLC, being duly sworn declare that I am the owner of the property
(PROPERTY OWNER)
Involved in the application. I hereby grant Molly Lawrence and Duncan Greene
of Gordon Derr LLP to act on my behalf. I further declare that all
statements, answers, and information herein submitted is in all respects true and correct to the
best of my knowledge and belief.

Douglas J. Jackson
Vice President
Signature

14 December 2007
Date

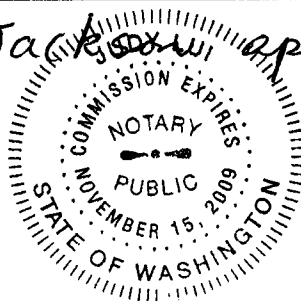
1414 31st Avenue S., #301
Seattle, WA 98144-3955
Address

Subscribed and sworn to before me this 14th day of Dec. 2007

Notary Public in and for the State of Washington, King County

Residing at Seattle WA.

Douglas J. Jackson appear before me.



jm

Legal Description:

**That portion of Government Lot 3, Section 31, Township 21 North,
Range 5, East of Willamette Meridian, in King County, Washington,
lying Northwesterly of 47th Street Southeast as established by deed
recorded under Recording No. 9302161342 and lying Easterly of New
Oravetz Road as established by deed recorded under Recording No.
9302161342.**

Rezone Submittal Requirements – Piano LLC Rezone Application

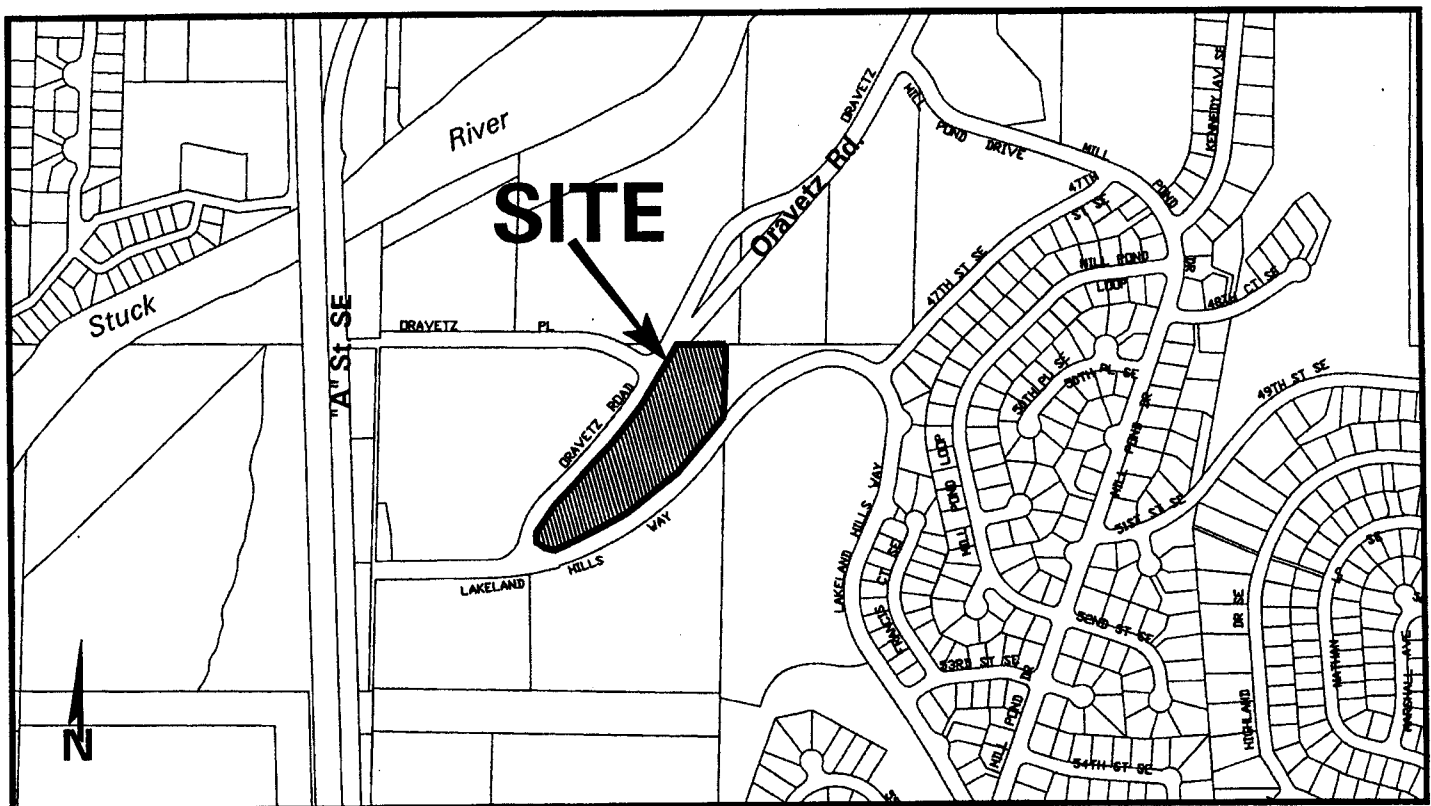
a) The intent of the zoning code and the comprehensive plan of the City. Is the rezone consistent with the comprehensive plan?

The intent of Auburn's zoning code and Comprehensive Plan is to concentrate higher density housing in particular regions of the City. The subject property lies within the Comprehensive Plan designation of "Moderate Density Residential". A rezone to R-3 would bring the property into compliance with the "Moderate Density Residential" designation.

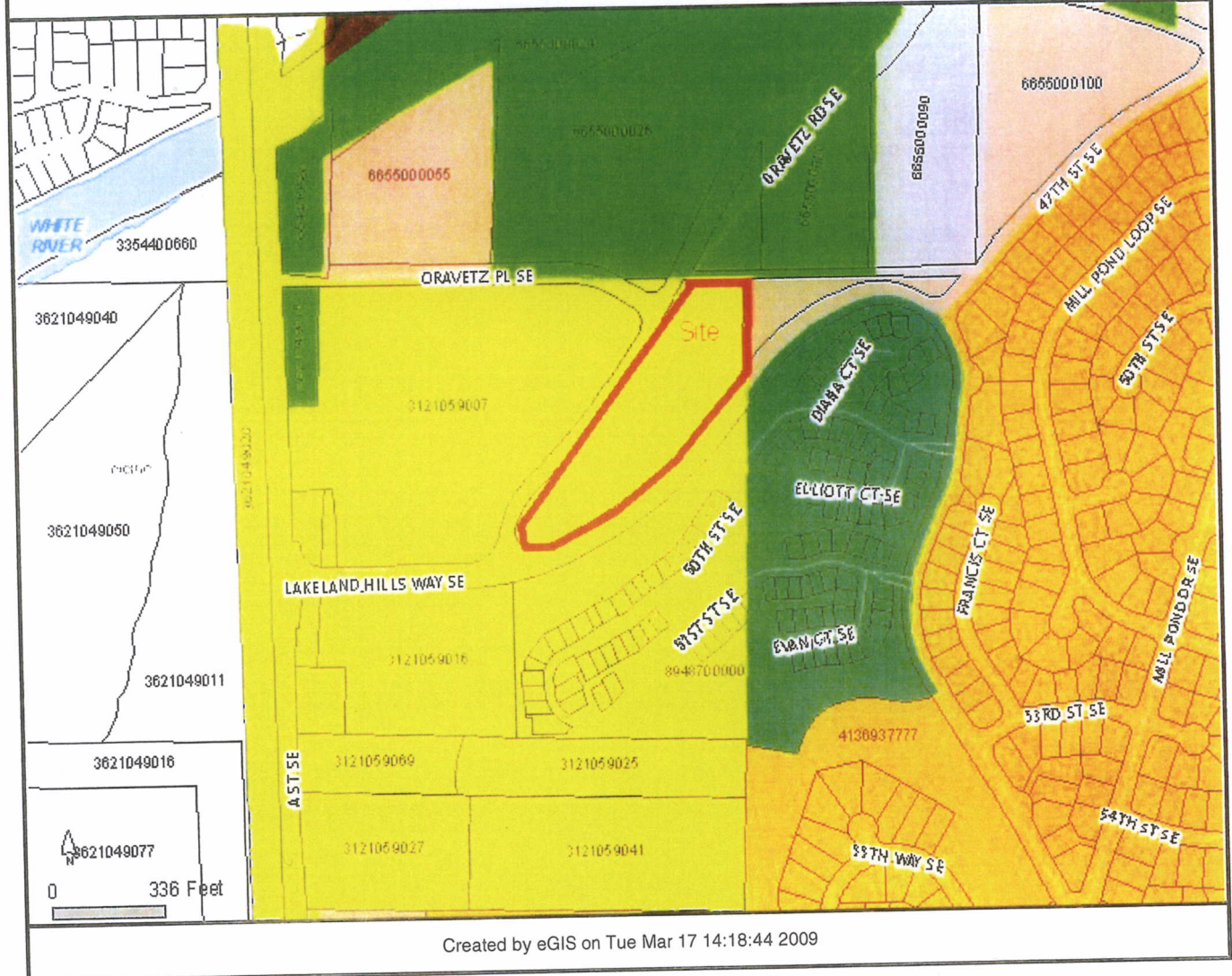
The current zoning of the property as R-1 conflicts with the Comprehensive Plan designation. R-1 is not an implementing zone for "Moderate Density Residential". Rather, R-1 zoning provides for single-family detached dwellings, which one would find in a "Single Family" Comprehensive Plan Designation. By comparison, a re-zone to R-3 would implement the Comprehensive Plan designation of "Moderate Density Residential".

b) The availability of municipal services such as water, sewer, roads, fire, and police protection which might be required by reason of the proposed rezone

All municipal services, such as water, sewer, roads, fire, and police currently serve the property. The same would apply to a rezone. Dave Burdick in the Public Works department reported that the property is serviced by a 12" water line and a 24" storm sewer, both of which are adequate to service the density that a rezone to R-3 would allow. Bob Elwell, sewer engineer, reported the 8" sewer line would be able to service as many units as could fit on the property. Police and fire departments report that they also service the area.



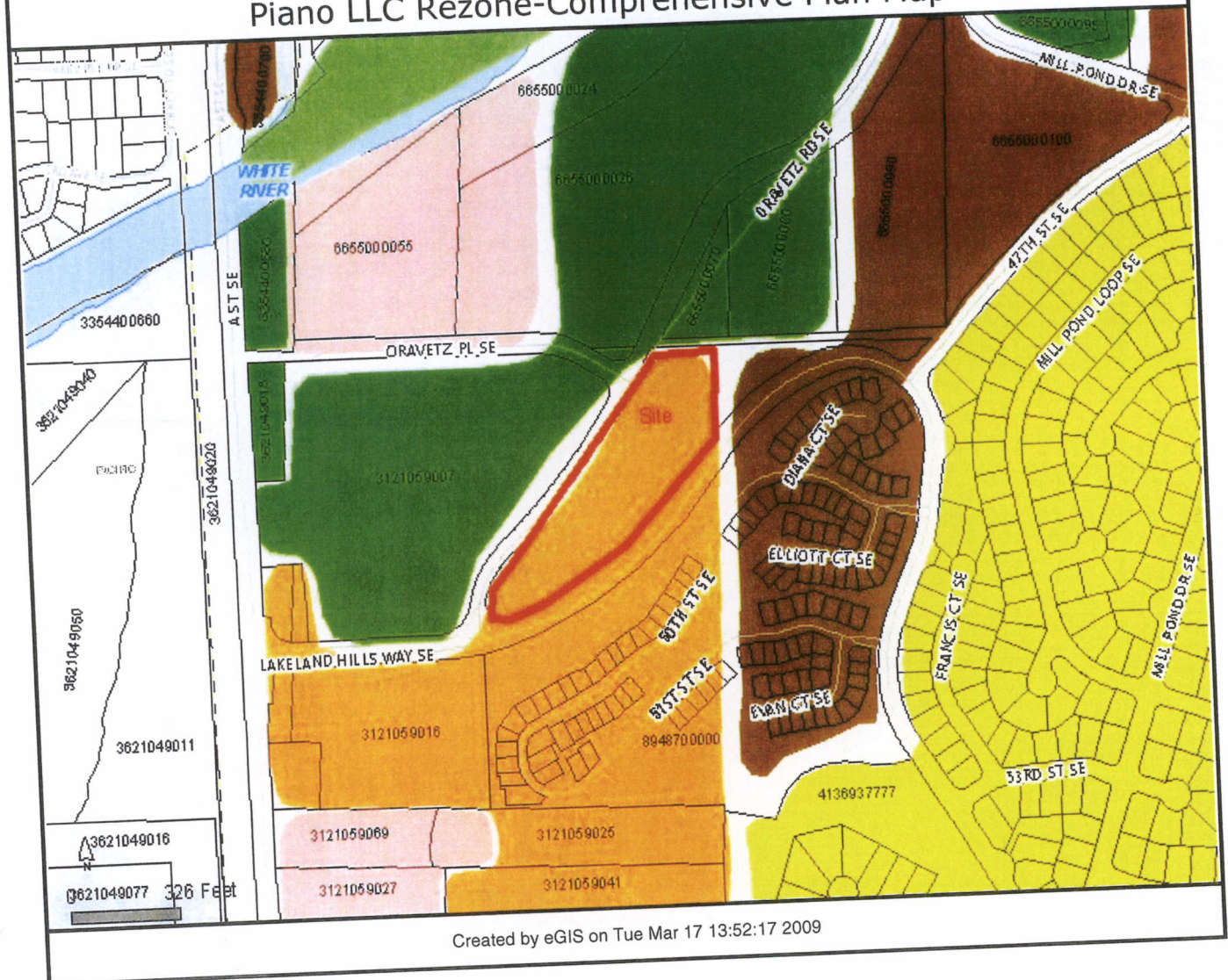
Piano LLC Rezone-Zoning



- ☐ Tax Parcel Lines
- ☐ Tax Parcel Numbers
- ☐ RR RESIDENTIAL DISTRICT
- ☐ RS/LHR5 SINGLE-FAMILY RESIDENTIAL DISTRICT
- ☐ R1/LHR1 SINGLE-FAMILY RESIDENTIAL DISTRICT
- ☐ R2/LHR2 SINGLE-FAMILY RESIDENTIAL DISTRICT
- ☐ R3 TWO-FAMILY (DUPLEX) RESIDENTIAL DISTRICT
- ☐ R4/LHR4 MULTIPLE-FAMILY RESIDENTIAL DISTRICT
- ☐ P1/LHP1 PUBLIC USE DISTRICT
- ☐ I INSTITUTIONAL USE DISTRICT
- ☐ UNC UNCLASSIFIED USE DISTRICT
- ☐ PUD PLANNED UNIT DEVELOPMENT
- ☐ LAKELAND HILLS SOUTH PUD
- ☐ TV TERRACE VIEW

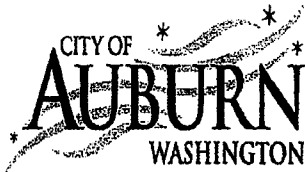
Exhibit 6
Number of Pages 1

Piano LLC Rezone-Comprehensive Plan Map



- Rural
- Single Family Residential
- Moderate Density Residential
- High Density Residential
- Office Residential
- Neighborhood Residential
- Light Commercial
- Heavy Commercial
- Downtown
- Light Industrial
- Heavy Industrial
- Public and Quasi-Pubic
- Open Space
- Rivers, Streams and Lakes
- City Limits

Exhibit 7
Number of Pages 1



Peter B. Lewis, Mayor

25 West Main Street * Auburn WA 98001-4998 * www.auburnwa.gov * 253-931-3000

**FINAL
MITIGATED DETERMINATION OF NON-SIGNIFICANCE (MDNS)
SEP07-0034**

DESCRIPTION OF PROPOSAL: Proposed rezone of approximately 4.76 acres from R1, Single Family Residential District to R3, Duplex Residential District. There is no development associated with this rezone request at this time.

APPLICATION NAME: Piano LLC, Rezone

PROPONENT: Molly Lawrence
Gordon Derr LLP
2025 1st Ave, Suite #500
Seattle, WA 98121
(206) 322-3690

LOCATION: The property is located NE of the Intersection of Oravetz Road and Lakeland Hills Way SE. The site is located within the southwest quarter of Section 31, Township 21 North, Range 5 East, W.M. King County, Washington. Assessor's Parcel Number: 3121059064.

LEAD AGENCY: City of Auburn. The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). However, the Responsible Official has determined that an MDNS is appropriate for this proposal under the authority of ACC 14.08.010 (C) and ACC 16.06.120. This decision was made after review of a completed environmental checklist and other information submitted by the applicant on file with the lead agency. A copy of the subsequent threshold determination for the specific proposal may be obtained upon request.

The Responsible Official of the City of Auburn hereby makes the following Findings of Fact based upon impacts identified in the environmental checklist and the "Final Staff Evaluation for Environmental Checklist No. SEP07-0034", and Conclusions of Law based upon the Auburn Comprehensive Plan, and other Municipal policies, plans, rules and regulations designated as a basis for the exercise of substantive authority under the Washington State Environmental Policy Act Rules pursuant to RCW 43.21C.060. The SEPA Responsible Official has further determined that, consistent with WAC 197-11-158 and RCW 43.21C.240, many impacts of the proposal will be mitigated by existing development regulations as well as applicable County, State and Federal regulations and permit requirements.

FINDINGS OF FACT

1. Proposed rezone of approximately 4.76 acres from R1, Single Family Residential District to R3, Duplex Residential District. The applicant states that the rezone to R3, Duplex Residential District will allow greater flexibility in density requirements than R1, and thus allows more diversity and creativity in site design and housing types, while protecting the natural features of the site. Single family residences and duplexes are allowed outright within the R3 zoning district. Multiple duplexes on a single lot and multifamily residential structures are allowed upon approval of a conditional use in the R3 zoning district. Whereas within the existing R1 zoning district, development is limited to one detached single family residential unit per lot. There is no development proposal associated with this rezone request at this time.
2. A Geotechnical Investigation report completed by Associated Earth Sciences, Inc, April 8, 2008, was completed for the subject site and submitted with the environmental checklist by the applicant. The report also considered a previous preliminary geotechnical study by AESI, September 1998, for the same site. The City authorized an independent review of the applicant's report by ZZA Terracon which the City received on May 30, 2008.

The report characterizes the site as currently vacant with forested areas throughout the site. The property comprises a roughly rectangular shaped parcel, which slopes moderately to steeply upward to the south and east from Oravetz Road SE. The central section of the site contains a benched area. From the bench area, the site slopes steeply upward to Lakeland Hills Way SE within the northern and central sections and gently upward within the southern sections of the site. The steep slopes along Oravetz Road SE are generally inclined at approximately 70 percent grades, while the steep slopes within the central section of the site below Lakeland Hills Way SE are inclined at approximately 40 to 60 percent grades. Some localized areas of the slopes above the benched area are inclined at grades of approximately 80 to 90 percent. The slopes along Oravetz Road SE and within the central portion of the site appear to have been somewhat modified by past grading activity.

Based on the geotechnical report, portions of the site are classified as a potential geologically hazardous area pursuant to the City's Critical Area regulations contained within Section 16.10.080.G.2 ACC (Landslide Hazard Areas). Landslide hazard areas are classified as Class I, Class II, Class III, or Class IV. Class IV/Very High Hazard landslide hazards are areas with slopes steeper than 15 percent with mappable zones of emergent water (e.g., springs or ground water seepage), areas of known (mappable) landslide deposits regardless of slope, and all areas with slopes 40 percent or greater.

Based on site topographical conditions, the applicant's geotechnical engineer indicates that a Class IV Very High Hazard landslide area exists per Section 16.10.080.G.2.d ACC (Landslide Hazard Areas) exists. However, it is the opinion of the applicant's geotechnical engineer that based upon the medium to dense, glacially consolidated soil conditions, and lack of adverse groundwater conditions, and

indications of past landslide activity, site landslide hazard should be considered low to moderate.

In addition, the independent review conducted by ZZA Terracon concurred with the applicant's geotechnical engineer that characterizing the slope as very high hazard "based on the existing slope gradients is not justified." ZZA Terracon observed that the current topography appears to have been artificially created. It is the opinion of the City's independent geotechnical engineer that the slope "overall landslide hazard" be classified as Class II/Moderate Hazard.

Upon future development of the site, the applicant's geotechnical engineer is recommending that all building foundations observe a 15-foot buffer from the crest and toe of all steep slopes inclined at grades of 40 percent or steeper (ACC 16.10.090.E.4.c). Alternatively, the steep slope buffer could be reduced to zero provided adequate foundation embedment or retainage is provided. Proposed reductions of the recommended slope buffer should be reviewed by the project geotechnical engineer once a specific development plan is available. Further, the applicant's geotechnical engineer indicates that future site development would not decrease the stability of the slopes below current conditions provided the engineer's recommendations are followed.

Based on the geotechnical reports, the site is classified as a potential geologically hazardous area pursuant to the City's Critical Area regulations contained within Section 16.10.080.G.1 ACC Critical Erosion Hazard areas. Soils on the site generally consist of silty fine sands and gravels containing a significant amount of silt and fine sand sized particles. These soils have been classified as gravelly sandy loam (AgD) soils by the NRCS with an erosion classification of severe. Therefore the site is classified as an Erosion Hazard area and these soils will be sensitive to erosion, especially given the sloping nature of the site. Upon site development specific mitigation measures are recommended to be implemented while the site is under construction. This issue will be addressed at the time construction permits for development proposals are submitted by the applicant for review by the City. The following mitigating measures are recommended by the applicant's geotechnical engineer:

- To reduce the amount of sediment transport off the site during construction, silt fencing should be placed along the lower elevations of the cleared areas.
- Construction should proceed during the drier periods of the year and distributed areas should be placed along the lower elevations of the cleared areas.
- Surface runoff should be controlled during and following development. Newly graded slopes should be provided with intermediate benches and drainage swales to slow the surface runoff velocities and reduce slope erosion. Surface runoff must not be directed onto or above the steeply sloping areas. All devices used to collect surface runoff should be directed into a tight line or

swale system designed to convey the collected drainage to discharge into an approved storm drain subsequent to meeting the City's and Washington State Department of Ecology turbidity requirements. Uncontrolled discharge on or above the sloping areas may promote erosion and earth movement.

- Soils which are to be reused around the site should be stored in such a manner as to reduce erosion from the stockpile. Protective measures may include, but are not necessarily limited to, covering with plastic sheating, the use of low stockpiles in flatter areas, or the use of hay bales/silt fences around pile perimeters.
 - Areas stripped of vegetation during construction should be mulched and hydroseeded or replanted as soon as possible, or otherwise protected. During winter construction, hydroseeded slopes should be covered with clear plastic to facilitate new grass growth.
3. The site is zoned R1 Single Family Residential. The area within the general vicinity of the subject site can be characterized as land transitioning from less urban to a more urban development pattern. The properties adjacent to the subject site, particularly along the north, and east edge can be characterized as rapidly developing to higher urban densities which are consistent with the City of Auburn zoning and Comprehensive Plan designations. A high school and elementary school are located north and west of the site on the west side of Oravetz Road SE.
 4. The property lies within an Urban Growth Area designated under the State Growth Management Act. Development is encouraged in the Urban Growth Area where adequate public facilities and services exist or can be provided in an efficient manner. The City of Auburn Comprehensive Plan Land Use Map designates the site as Moderate Density Residential 6-10 units per acre. The area east of the site is designated as High Density Residential, 10-20 units per acre. To the south of the perimeter of the subject site, areas are designated Moderate Density Residential, 6-10 units per acre. To the west of the perimeter of the subject site, areas are designated as Public & Quasi Public.
 5. The allowed density of the site under the existing R1 Single Family Residential zoning is approximately 26 dwelling units (5.4 dwelling units per acre). With the proposed rezone to R3 Two-Family (Duplex) Residential District the allowed gross density is increased to approximately 41 dwelling units (8.6 dwelling units per acre) for single family development. Pursuant to Section 18.16.030 ACC, duplex and multifamily development are allowed via a conditional use permit in the R3 zoning district, whereas single family development is allowed outright.
 6. The site has street frontage on both Lakeland Hills Way SE and Oravetz Road SE. Upon future development direct access will most likely be on the west side of the property from Oravetz Road SE.

7. Lakeland Hills Way SE and Oravetz Road SE are classified as Minor Arterials in accordance with the City of Auburn Comprehensive Transportation Plan. Minor Arterials interconnect and augment the principal arterial system by providing access to and from the principal arterials and freeways. They serve moderate length trips at a somewhat lower mobility than principal arterials, distribute traffic to smaller geographic areas than principal arterials, and should not enter neighborhoods. They are typically constructed to accommodate four lanes of traffic with speed limits of 30 to 35 mph.
8. King County Metro provides transit service in the vicinity of the project site including Lakeland Hills Way SE. Upon future development demand for bus service will increase. METRO will be contacted at the time of development of the site for any requested improvements to bus stops in the area.
9. The City of Auburn will provide public water and sanitary sewer to the site upon future development.
10. The "Final Staff Evaluation for Environmental Checklist No. SEP07-0034" is hereby incorporated by reference as though set forth in full.
11. The consultant reports are attached to this MDNS as exhibits for reference purposes only. Except where specifically cited in this MDNS, they are not adopted as findings of fact or conclusions of law.

CONCLUSIONS OF LAW

The conditions of this MDNS are supported by plans, regulations, and policies formally adopted by the City for the exercise of substantive authority under SEPA. The MDNS also takes note of the extent to which many local, State and Federal regulations and permit requirements will govern the project to mitigate its potential impacts, in accordance with WAC 197-11-158 and RCW 43.21C.240.

Existing Policies & Regulations

1. Residential densities in areas designated for single family residential use should be no greater than 6 units per acre. They should also be within areas with good transit availability which is measured as 1/4 mile or less to a route with at least half hour service. Accessory dwelling units should be permitted to allow increased densities. The bulk of the single family residential community should be developed at a density of between 4 and 6 dwelling units per acre. (Policy LU-14, ACP)
2. Residential densities in areas designated for multiple family development should not exceed 20 units per acre. Multiple family densities should generally decrease with proximity to single family areas. Multiple family densities may exceed 20 units per acre provided they are within walking distance (1/4 mile) of regional transit facilities or are targeted to populations not requiring outdoor recreation areas and having low private automobile usage (e.g. elderly housing). These targeted developments

should be located in close proximity to shopping, medical and public transportation services. (Policy LU-15, ACP)

3. Residential development should be related to topography, circulation, and other amenities, as guided by policies of this Plan. (Policy LU-18, ACP)
4. The development of new neighborhoods should be governed by development standards which allow some flexibility. Flexibility should be considered to encourage compact urban development, to provide protection of critical areas, and resource lands (including, but not limited to, agricultural resource lands, cultural resources, forest resource lands, mineral resource areas, hillsides or wetlands), and to facilitate non-motorized transportation. (Policy LU-20, ACP)
5. Development design should utilize and preserve natural features, including, but not limited to, topography and stands of trees, to separate incompatible land uses and densities. (Policy LU-26)
6. Development codes shall be modified to allow the City to require that landscaped buffers, natural area preservation or other measures are utilized to separate new residential developments from incompatible uses and major streets. These buffers should permit access between the residential area and the major street by pedestrians and bicyclists. (Policy LU-28)
7. The City recognizes the important benefits of native vegetation including its role in attracting native wildlife, preserving the natural hydrology, and maintaining the natural character of the Pacific Northwest region. Native vegetation can also reduce the use of pesticides (thereby reducing the amount of contaminants that may enter nearby water systems) and reduce watering required of non-native species (thereby promoting conservation). The City shall encourage the use of native vegetation as an integral part of public and private development plans through strategies that include, but are not limited to, the following:

Encouraging the use of native plants in street landscapes and in public facilities.

- Providing greater clarity in development regulations in how native plants can be used in private development proposals.
 - Pursuing opportunities to educate the public about the benefits of native plants. (Policy EN-33, ACP)
8. The City shall discourage the unnecessary disturbance of natural vegetation in new development. (Policy EN-34, ACP)
 9. The City shall seek to ensure that land not being developed or otherwise modified in a manner which will result in or significantly increase the potential for slope slippage, landslide, subsidence or substantial soil erosion. The City's development standards

- shall dictate the use of Best Management Practices to minimize the potential for these problems. (Policy EN-69, ACP)
10. Where there is a high probability of erosion (see Map 9.6), grading should be kept to a minimum and disturbed vegetation should be restored as soon as feasible. The City's development standards shall dictate the use of Best Management Practices for clearing and grading activity. (Policy EN-70, ACP)
 11. The City shall consider the impacts of new development on hazards associated with soils and subsurface drainage as a part of its environmental review process and require any appropriate mitigation measures. (Policy EN-71, ACP)
 12. The City shall consider the impacts of new development on Class I and Class III landslide hazard areas (Map 9.7) as part of its environmental review process and require any appropriate mitigating measures. The impacts of the new development, both during and after construction, on adjacent properties shall also be considered. (Policy EN-73, ACP)
 13. Auburn will seek to retain areas with slopes in excess of 40 percent as primarily open space areas in order to protect against erosion and landslide hazards and to limit significant removal of vegetation to help conserve Auburn's identity within the metropolitan region. Slopes greater than 15 percent with zones of emergent water (springs or ground water seepages) and all slopes with mappable landslide potential identified by a geotechnical study shall be protected from alteration. (Policy EN-74, ACP)
 14. New development within Class I and Class III landslide hazard areas (Map 9.7) shall be designed and located to minimize site disturbance and removal of vegetation, and to maintain the natural topographic character of the site. Clustering of structures, minimizing building footprints, and retaining trees and other natural vegetation, shall be considered. (Policy EN-76, ACP)
 15. It is recognized that a particular development or land use, although otherwise consistent with city regulations and policies, may create adverse impacts upon facilities, services, natural systems or the surrounding area when aggregated with the impacts of prior or reasonably anticipated future developments. The city shall evaluate such cumulative environmental impacts and make its environmental determinations and substantive decisions accordingly. (ACC 16.06.060.D)
 16. Section 16.10.080.B ACC states that classification of critical areas shall be determined by the director based on the consideration of the following factors in the following order: 1) Consideration of the technical reports submitted by qualified consultants in connection with the applications subject to these regulations; 2) Application of the criteria contained in these regulations; and 3) Critical areas maps maintained by the planning and community development department.

17. Section 15.74.020 ACC regulates all land-disturbing activities and the removal of trees, shrubs, and/or ground cover. Land-disturbing activities proposed within critical areas and/or land subject to shoreline management jurisdiction shall be subject to Chapters 16.10 and 16.08 ACC, respectively, and the procedural requirements of Chapter 15.74 ACC.
18. Pursuant to Section 15.74.010 ACC, it is the intent of the Clearing, Filling, and Grading Chapter to regulate all land-disturbing activities on all properties, and ensure reasonable mitigation is provided as necessary to in relevance:
- Prevent creation of public nuisance situations, promote the public health, safety and general welfare of the citizens of Auburn;
 - Preserve, maintain and enhance the city's physical and aesthetic character by controlling the removal of significant trees and ground cover on undeveloped and underdeveloped properties;
 - Encourage building and site planning practices that are consistent with the city's natural topographical and vegetation features in a manner which provides for the reasonable development and enjoyment, to include preservation and enhancement of views, of the property;
 - Preclude the disturbance or removal of vegetation in advance of the city's evaluation of a development proposal;
 - Implement the policies of the city's comprehensive plan.
19. Chapter 18.50 ACC (Landscaping & Screening) provides minimum requirements in order to maintain and protect property values, to enhance the city's appearance, to visually unify the city and its neighborhoods, to improve the character of certain areas of the city, to reduce erosion and storm water runoff, and to maintain or replace existing vegetation and to prevent and abate public nuisances.
20. Section 18.16.010 ACC, states the R-3 duplex residential zones are intended to permit a limited increase in population density in those areas to which this classification applies by permitting two dwelling units on a minimum size lot while at the same time, by means of the standards and requirements set forth in this chapter, maintaining a desirable family living environment by establishing minimum lot areas, yards and open spaces. A related consideration is to provide a transition between single-family areas and other intensive designations or activities which reduce the suitability for single-family uses.

Conclusions

1. The Responsible Official has considered whether other regulations would mitigate the identified adverse impacts, and concludes that the reasonably anticipated future impacts are not sufficiently mitigated by those regulations. Therefore, the imposition of conditions are appropriate.

2. This proposal does not have probable significant impact on the environment, and therefore an environmental impact statement is not required under RCW 43.21C.030(2)(c). However, because the rezone of the affected property from R-1 to R-3 will result in increased density, the Responsible Official concludes that the rezone itself creates a reasonable anticipation of future impacts, specifically an increase in density allowed as a matter of right in the R-3 Zone, and the possibility of increased visual impacts.
3. Based on the Findings of Fact, a portion of the site is classified as a geologically hazardous area as defined in ACC Section 16.10.080.G.2.b (Landslide Hazard Areas). Based on the technical reports, this geologically hazardous feature is defined as a Class II/Moderate Hazard landslide hazards area. Therefore, the imposition of a condition related to the applicant complying with the geotechnical report prepared by Applied Earth Sciences on April 8, 2008 is appropriate.
4. Based on Findings of Fact, a portion of the site is classified as a potential geologically hazardous area pursuant to the City's Critical Area regulations contained within ACC Section 16.10.080.G.1 (Critical Erosion Hazard Areas). Therefore, the imposition of a condition related to the applicant complying with the geotechnical report prepared by Applied Earth Sciences on April 8, 2008 is appropriate.
5. The rezone as proposed is consistent with the City of Auburn Comprehensive Plan designation. This proposal implements several goals and policies of the comprehensive plan. The density for the proposed rezone is an acceptable level to support urban services, and supports projected population growth and the changing demographics of the City. Further, the increase in density that can be realized is appropriate given the identified geotechnical constraints.
6. The rezone is not anticipated to result in adverse impacts due to the classifications and capacity of adjacent streets.

CONDITIONS

This determination provides the following specific mitigation measures necessary to avoid a Determination of Significance under SEPA.

1. As a prominent entrance associated with the Auburn Lakeland Hills neighborhood, at the time of future development, the applicant/owner shall in accordance with Chapter 15.74 ACC (Land Clearing, Filling, and Grading) and Chapter 18.50 ACC (Landscaping) implement measures which minimize the potential adverse visual impact of the site as viewed from surrounding parcels and Oravetz Road and Lakeland Hills Way SE.
2. Between the time this rezone is approved and whenever a subsequent permit for this site is applied for, the applicant/owner shall not remove the existing native trees from the site. For purposes of this condition, the owner shall not be considered to have removed native vegetation if the vegetation is destroyed or damaged by natural disaster or other causes not generated by the owner. For example, the owner

shall be permitted to remove trees blown down in a windstorm. The applicant owner may supplement the native vegetation with native and non-native plantings, as approved by the Director of Planning or designee.

3. If the rezone request is approved, at the time of future development, the applicant/owner shall provide sufficient information to allow the City to determine whether additional mitigation measures are necessary. This additional information may include: a project-specific traffic study; a rendering (conceptual design) sufficient to allow the city to determine view impacts from adjacent properties and streets; an erosion/sedimentation control plan, documentation ensuring compliance with the Geotechnical Report prepared by Associated Earth Sciences for this site (dated 4/8/08), a vegetation preservation and enhancement plan, if required by City Code; and, other information as required by City Code and policies.

**RESPONSIBLE OFFICIAL:
POSITION/TITLE:**


Cynthia Baker, AICP
Director of Planning, Building &
Community

ADDRESS:

25 West Main Street
Auburn, Washington 98001
(253) 931-3090

DATE ISSUED: January 14, 2009

SIGNATURE:



Cynthia Baker

Note: This determination does not constitute approval of the proposal. Approval of the proposal can only be made by the legislative or administrative body vested with that authority. The proposal is required to meet all applicable regulations.

Any person aggrieved of this final determination may file an appeal with the Auburn City Clerk within 21 days of the date of issuance of this notice. All appeals of the above determination must be filed by 5:00 P.M. on February 4, 2009, with required fee.

February 29, 2008

CITY OF AUBURN
PLANNING DIRECTOR
DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
25 WEST MAIN STREET
AUBURN, WA 98001

RECEIVED
FEB 29 2008
PLANNING DEPARTMENT

Re: City of Auburn Case # SEP07-0034
Rezone of King County parcel #312105-9064

Director Baker,

We received noticed of the above referenced case and have no comment at this time.

However, my client has a continued interest in the processing of future actions under the proposed zone. The parcel is in the vicinity of the King County entrance to the Lakeland Hills/Lakeland Hills South Planned Unit Developments (PUD). Although the subject parcel is not a part of the Lakeland PUD, the future development will influence the PUD's perception by its mere location.

I am requesting notification as a party of interest for future actions related to the subject rezone request and subsequent applications requiring public notice. Please contact me directly (253-826-5378 or smartin@investco.net) if additional information is required or with questions related to this request.

Respectfully Submitted,

ELECTRONIC COPY

Sean Martin, AICP
Project Manager

Exhibit 13
Number of Pages 1

Jeff Dixon

From: Cindy Baker
Sent: Monday, March 03, 2008 6:39 PM
To: Chris Hankins
Cc: Jeff Dixon
Subject: FW: Comment on rezone in lakeland hills area

RECEIVED
MAR 03 2008
PLANNING DEPARTMENT

Not sure who Mel is, but here is an e-mail

From: Mel Johnson [mailto:engineer.mel@gmail.com]
Sent: Monday, March 03, 2008 4:46 PM
To: Cindy Baker
Subject: Comment on rezone in lakeland hills area

I can't find an email address for Chris Hankins so I hope you might be able to send this to him for me.

I would like to submit some comments on the proposed rezone as described in the public notice for Piano LLC, Rezone with application numbers SEPA Checklist (SEP07-0034), Rezone (REZ07-0004)

I oppose the rezone for the following reasons.

1. Traffic. The Lakeland Hills Way and A street intersection is now already highly congested and there is already many more areas in lakeland hills that are still to be developed. I don't think that there is sufficient traffic capacity on the current roads to support another development especially in a higher density.
2. Visual impact. I appreciate the mitigation proposed but the Lakeland Hills Way road will have a sever impact if there is to be destruction of the current green belt.
3. Water Absorption. By proposing a higher density housing zone, there will be an increased amount of impermeable surface. This will impact the storm sewage system and run off straight into the river. There would be a negative environmental impact.
4. Zoning continuity. The lakeland hills area already has many high density housing areas. I don't think that this zone should be changed to high density as there is already plenty of that currently available. This would impact housing prices and neighborhood continuity.

Thanks,

Mel Johnson
Auburn Washington

Exhibit 14
Number of Pages 1

March 3, 2008

RECEIVED
MAR 05 2008
PLANNING DEPARTMENT

Ms. Cynthia L. Baker
Planning Director
City of Auburn
25 West Main Street
Auburn, WA 98001

Re: Piano LLC. Comments on Proposed SEPA Threshold Determination
SEPA Checklist (SEP07-0034) & Rezone (REZ07-0004)

Dear Ms. Baker:

I am the project proponent for the above-referenced rezone application for the property of Piano LLC ("Piano"). I would like to thank you for your review of our application and use of the optional MDNS process to expedite project review. We appreciate your efforts to move the application through the review process in a timely manner. We do have a concern, however, with one of the proposed SEPA mitigation conditions. Specifically, we request that you eliminate the third bullet from mitigation measure (1) before issuing the final MDNS for this application. As explained below, the third bullet point is redundant and places an unnecessary burden on the property.

Piano and I appreciate the City's concern for protecting the aesthetics within the City and of neighboring developments. Toward that end, we support the first two bullets under mitigation condition (1), which require the future installation of a landscape buffer, including new and/or existing vegetation and possibly a berm, at the entrance to the site. Although the rezone stage is an early point in the development review process to impose such site-specific conditions, these conditions are easily understood.

By comparison, the final bullet under mitigation measure (1) raises significant concerns. First, based on our review of the City Code, this condition appears to be unnecessary because it is redundant at this point in the development process. The City's Comprehensive Plan includes several provisions aimed at preserving area aesthetics. If and when Piano LLC submits an application to subdivide and/or develop the property, the City will have an opportunity to evaluate the proposed development against its application criteria, including the City's Comprehensive Plan provisions regarding aesthetics. However, at this point, Piano has submitted only a rezone application. Given that Piano is only requesting a rezone, the City does not need to impose this measure at this point.

Exhibit 15
Number of Pages 2

Second, the language of the condition as drafted is vague, leaving its meaning open to interpretation, debate and potential dispute. What the City will require "to ensure a high quality visual environment" is not clear from the condition language. As such, it places an undue burden on the owner in attempting to satisfy such a requirement for a rezone application. While we trust the City's motives in proposing this condition, our understandable concern is that in the future at the point of subdivision application the City could attempt to impose an interpretation of this condition that we could not foresee and with which we do not agree. At that point, the City would likely assert that we are bound to its interpretation of this vague condition. That is an untenable position, leading potentially to unnecessary disputes and ill will.

By comparison, at the point of subdivision or development permit application, both the City and applicant will be in a much better position to understand and agree on appropriate improvements that "will ensure a high quality visual environment . . . as viewed from Oravetz Road and Lakeland Hills Way SE." Removing the third bullet now from the DNS regarding our rezone application will not limit the City's ability to apply the condition during a subsequent subdivision or development permit application.

Finally, it is unclear at this time whether Piano will be the ultimate developer of the subject property. Given current economic conditions, Piano might sell the property following the rezone to a builder or other land developer. The presence of this vague condition will confuse and worry any potential future purchaser/developer. A vague condition attached to a property will potentially make the transfer of that property to a third party more difficult and impair the efficient use of land. Again, because the City retains the authority to require adherence to its aesthetic policies as part of a future subdivision or other development permit application process, there is no reason to saddle the property with this vague condition at this time.

Based on the foregoing, we urge the City to remove the third bullet from the mitigation measures for this rezone application before issuing the final MDNS. If you have reservations about doing so, please contact me prior to issuing the final MDNS so that we can meet to discuss it in person. Also, if you have any other questions or comments regarding the content of this letter or any aspect of the proposed rezone, please contact me. My telephone number is 206-382-9540 and my email address is mlawrence@gordonderr.com. Thanks in advance for your consideration.

Very truly yours,



Molly A. Lawrence

MAL:MAL

cc: Douglas Jackson, Piano LLC
Jason Naiden, Piano LLC

March 11, 2008

Molly Lawrence
Gordon Derr LLP
2025 1st Ave, Suite #500
Seattle, WA 98121

**RE: Piano LLC, Rezone Application
SEPA Checklist (SEP07-0034)
Rezone (REZ07-0004)**

Dear Ms. Lawrence:

As you know, the preliminary Mitigated Determination of Non Significance (MDNS) for this proposed rezone was issued on February 18, 2008 with one condition. Since that time and prior to the close of the comment period, we received several comments regarding the proposed MDNS and based on these comments and continued review of the documents submitted with the rezone and SEPA applications we have determined that additional information is necessary prior to issuance of a final SEPA determination. The following summarizes the additional information requested at this time;

A critical areas report (geotechnical) is required to be provided that analyzes the topographical features and slope stability of the property. This report is required to be prepared in accordance with Section 16.10.070 ACC. The purpose of the report is to determine the extent, characteristics and functions of the critical areas located on or potentially affected by activities on the site where regulated activities are proposed. The report will also be used by the city to establish appropriate buffer requirements, use of the site, and to assist in the review of the rezone request. Further, the critical area report is required to be prepared by a qualified consultant.

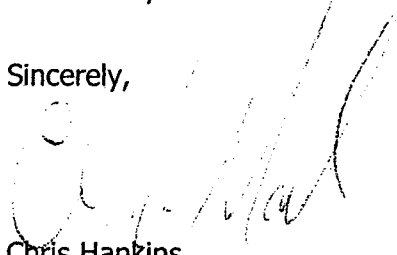
We have determined that the lack of information associated with the SEPA and rezone request regarding the topographical features and geologic hazard on the property may be considered insufficient to make a recommendation on the rezoning action. This is a subject area where the City needs this information in advance in order to complete its recommendation on the rezone. Upon review of this information, we may determine additional conditions associated with this proposed rezone or SEPA decision are necessary to ensure that anticipated environmental impacts are mitigated.

Also, we would like to set up a meeting to discuss your comments submitted by letter on March 3, 2008 regarding the proposed MDNS regarding protection of aesthetics for future development of the property.

16
Exhibit of Pages
Number of Pages 2

If you have any questions regarding this letter, I can be reached at (253) 804-5031, fax (253) 804-3114, or email chankins@auburnwa.gov. To further assist your needs, The Auburn City Code can be reviewed in its entirety online at www.auburnwa.gov.

Sincerely,



Chris Hankins
Senior Planner

Encl: SEPA Comment Letters

cc: Cindy Baker, Director of Planning, Building, & Community
Ingrid Gaub, Assistant City Engineer
Jason Naiden, Piano LLC, 1414 31st Ave. S. #301, Seattle WA 98144

Piano LLC

1414 31st Avenue S. #301
Seattle, WA 98144-3955

Tel: 1-206-322-3690
Fax: 1-206-322-3407
jasonn@MagnusLLC.com

1 August 2008

Ms. Cynthia L. Baker
Planning Director
City of Auburn
25 West Main Street
Auburn, WA 98001

RECEIVED
PERMIT CENTER
AUG 05 2008
BY Carolyn
TIME pm

Re: Comments on Proposed SEPA Threshold Determination
SEPA Checklist (SEP07-0034) & Rezone (REZ07-0004)

Dear Ms. Baker:

During our meeting on June 16, 2008, we reviewed the geotechnical reports from Aaron McMichael at Associated Earth Sciences, Inc. ("AESI"), together with the review letters from ZZA Terracon ("ZZA"). During that meeting there was some confusion as to the proper classification of the steep slopes on the Piano parcel under Auburn's Municipal Code (AMC) 16.10.080 (G).

Piano LLC maintains that the on-site slopes are properly categorized as Class II/Moderate Hazard under the AMC. On page 6 paragraph 4 of the report prepared by AESI dated April 8th, 2008, the report states:

Based on the topographic conditions, site landslide hazard per 16.10.080 would be classified as Class IV/Very High Hazard. However, it is our opinion that based on the medium dense to dense, glacially consolidated soil conditions, and lack of adverse ground water conditions and indications of past landslide activity, site landslide hazard should be considered **low to moderate**.

(Emphasis added). In ZZA's review letter, dated May 28, 2008, they similarly state:

Because the current topography appears to have been artificially created, **we take no exception with AESI's comment that characterizing the landslide hazard based on the existing slope gradients is not justified**. Based on the soil conditions described by AESI and extrapolating the topography of (relatively) undisturbed slopes in the area, **we would classify the overall landslide hazard as Class II/Moderate.**"

(Emphasis added).

Exhibit 17
Number of Pages 2

Both geotechnical engineers agree that the landslide hazard is Class II/Moderate. Both engineers agree that classification based on *topography* alone is not justified. The point of confusion seems to be the language in the AMC that implies Class IV when ever the gradient is greater than 40%. But this confusion is resolved by ACC 16.10.080 (B), which states in relevant part:

B. Classification of critical areas shall be determined by the director based on consideration of the following factors and **in the following order**:

1. Consideration of the technical reports submitted by qualified consultants in connection with applications subject to these regulations;
2. Application of the criteria contained in these regulations; and
3. Critical areas maps maintained by the planning and community development department.

(Emphasis added).

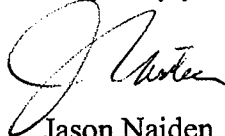
Based on this Code section, the geotechnical assessment of the two engineers should determine the classification of the site's steep slopes. The Code explicitly gives paramount weight to the assessments from "qualified consultants," who in this instance both agree that classification should be Class II/Moderate Hazard. Failing to give paramount weight to their assessments would render the words "in the following order" in AMC 16.10.080(B) meaningless.

In choosing this order of priority, the Auburn City Council understood that the criteria in the regulations are meant as guidelines and would be less accurate than an in-depth, site-specific analysis by a qualified consultant. Where a slope is in fact stable, the mere fact of its gradient should not override the opinions of qualified experts. The qualified consultants agree that the topography is not the proper method for evaluating and classifying the landslide hazard. However, at the development stage, the City could elect to evaluate the topography as part of the development plan.

Based on the foregoing, Piano LLC requests that the Planning Director recognize that the slopes on the Piano property are in fact Class II/Moderate Hazard. A Class IV designation elevates the topography of the site over all other criteria which is contrary to the technical reports submitted by two qualified consultants. This is not consistent with or warranted by the Code.

Please feel free to contact us if you wish to discuss this further.

Very truly yours,



Jason Naiden
Piano LLC

cc: Chris Hankins

EXHIBIT 18

FILE

CHAPTER 14

COMPREHENSIVE PLAN MAP

Introduction

The previous chapters presented the goals, objectives and policies intended to guide Auburn's future physical development. The Comprehensive Plan Map presented in this chapter (Map 14.1) applies those policies to the various areas of the City, by indicating the appropriate locations for various categories of land use. The Plan Map should be consulted together with the written policies of this Plan when decisions about land use and public facility development are considered.

This chapter also explains the reasoning and intention behind the Plan Map's land use designations. This should be useful in developing and applying implementing tools (such as zoning provisions); for interpreting the Plan Map as it applies to specific regulatory decisions or development proposals; and in adjusting or amending the Plan Map when changing conditions or land use markets warrant.

Finally, this chapter sets forth some special policies intended to deal with the unique problems or opportunities that exist in certain specific locations within Auburn. These specific policies supplement the general goals, objectives and policies of earlier chapters.

Land Use Designations: Plan Map

Residential Categories

Residential Conservancy

Purpose: To protect and preserve natural areas with significant environmental constraints or values from urban levels of development and to protect the City's water sources.

Description: This category should consist primarily of low density residential uses (with densities not exceeding one unit per four acres) in areas with environmental constraints and/or areas requiring special protection such as the City's watershed, which is a significant water resource. Examples include the Coal Creek Springs watershed area and low-lying areas along the Green River that are isolated from urban services. From a practical standpoint, this watershed area cannot be readily served by public facilities due to its physical separation from public facilities by an existing gravel mine operation that is expected to continue operation years into the future. The designation will serve to both protect environmental features and hold areas for higher density development until such time public facilities become available.

The area designated "residential conservancy" allows for a lifestyle similar to that of rural areas since the lower density established protects the critical areas such as the City's Coal Creek Springs watershed. A rural lifestyle generally includes allowance of farm animals, streets not urban in character (e.g. no sidewalks, street lights), and limited agricultural type uses.

Compatible Uses: Low density residential uses consistent with protecting the City's water resources and environmental constraints are appropriate. Low intensity cottage industry appropriate for rural areas may be allowed, subject to review. Various public and quasi-public uses which are consistent with a rural character may be permitted as conditional uses. Resource extractive uses can only be allowed if the basic environmental character of the area is preserved.

Those areas with critical areas shall be appropriate for low density residential, with the intent to protect environmentally critical areas from impacts associated with more intensive development. These environmentally critical areas are valued as a community resource, both for conservation purposes and public enjoyment; provided, that the environmentally critical areas are protected, low density single family residential use may be appropriate.

Criteria for Designation: This designation should be applied to areas with either significant environmental values worthy of protection or to those areas which may pose environmental hazards if developed, such as areas tributary to public water sources. It may also be appropriate, to a limited extent, as a means of delimiting the edge of the City or to areas that are impractical to develop to urban levels until a later time period due to pre-existing development patterns and the absence of public facilities.

Considerations Against Applying this Designation: Due to the costs of providing City services to these areas, this designation should be applied sparingly. It should be applied as a means of conserving significant environmental resources, to achieve watershed protection and/or to areas where development served by public facilities has been made impractical due to pre-existing use patterns.

Appropriate Implementation: The RC (residential conservancy) district will implement this designation.

Single Family

Purpose: To designate and protect areas for predominantly single family dwellings.

Description: This category includes those areas reserved primarily for single family dwellings. Implementing regulations should provide for an appropriate range of lot sizes, clustered and mixed housing types as part of a planned development.

Compatible Uses: Single family residences and uses that serve or support residential development, such as schools, daycare centers, churches and parks shall be considered appropriate and may be permitted on a conditional basis. Other public buildings and semi-public uses may be permitted if designed and laid out in a manner which enhances rather than detracts from the residential character of the area. In siting such uses, however, special care shall be given to ensuring adequate parking, landscaping, and traffic circulation with a minimum of conflict with residential uses. Uses which generate significant traffic (such as large churches) should only locate on developed arterials in areas zoned for institutional uses.

Intrusion of industrial uses into any of these single family areas shall be prohibited. Only very limited commercial uses such as home occupations or strictly limited appropriate conditional uses can be allowed.

Planned developments should be favorably considered in these designations in order to allow optimal flexibility. In providing such flexibility, the emphasis should be on small alley-loaded lot single family development, limited low density multifamily housing and a mixture of types, and design diversity should be sought. Except where conditional use permits have been previously granted, alternate structure types should not exceed more than 40 percent of the units, and alternative structures should in most cases contain no more than four dwelling units each. However, where substantial offsetting community benefits can be identified, such alternative structures may be allowed to contain more than three units each.

Criteria for Designation: Areas suitable for this designation include those areas designated in goals and policies of this Plan as single family areas. Consistent with those policies, areas within the Community Serving Area of the City suitable for this category should be reserved for these uses. This designation should also be applied to areas adjacent to lower density residential plan designations.

Considerations Against Applying this Designation: This designation would not be generally appropriate (although exceptions may exist) in the following areas:

1. Areas with high volumes of through traffic.
2. Areas developed in or more appropriate under the Plan policies for another use.
3. Areas within the Region Serving Area of the City.

Appropriate Implementation: Three zones may be used to implement this category:

- 1) R-1 - Single Family Residential District permits 8,000 square foot lots. This zone is intended to provide for moderate lot size single family development. It is intended to be applied to the relatively undeveloped portions of the City, areas where existing development patterns are consistent with the density and upland areas where greater densities would strain the transportation system.
- 2) R-2 - Single Family Residential District permits 6,000 square foot lots. This zone provides for relatively small lot sizes. It may be applied to the older neighborhoods of the City and reflects the typically smaller lot sizes found there. Application of this zone should be considered for areas considered appropriate for a mix of housing types, particularly in some of the Special Planning Areas as discussed below.
- 3) RS - Single Family Residential District permits 35,000 square foot lots. This zone is intended to provide for high quality large lot single family development and is primarily applied to areas designated as urban separators under the King County Countywide Planning Policies where rezones from existing densities (typically one unit per acre) are not allowed for a 20 year period and/or to areas with significant environmental constraints. It may also be

applied in limited instances to areas where greater densities are limited by environmental constraints.

Moderate Density

Purpose: To provide a transition between single family residential areas and other more intensive designations, as well as other activities which reduce the suitability of potential residential areas for single family uses (such as high traffic volumes). In so doing, this designation will offer opportunities for housing types which balance residential amenities with the need to provide economical housing choice, in a manner consistent with conserving the character of adjacent single family areas.

Description: Moderate density residential areas are planned to accommodate moderate densities of varying residential dwelling types. Appropriate densities in these areas shall range from 6 to 10 units per acre. Dwelling types would generally range from single family units to fourplex units, with larger structures allowed (at the same overall density) where offsetting community benefits can be identified. Structures designed to be occupied by owner-managers shall be encouraged within this designation.

Compatible Uses: Public and quasi-public uses that have land use impacts similar to moderate to high density residential uses are appropriate within this category. Also, uses which require access to traffic (such as schools and churches) are appropriate for these areas. Carefully developed low intensity office, or residentially related commercial uses (such as day care centers) can be compatible if developed properly. This designation can include manufactured home parks.

Criteria for Designation: Areas particularly appropriate for such designation are:

1. Areas between single family residential uses and all other uses.
2. Areas adjacent to, or close to major arterials designated in the transportation element.
3. Existing manufactured home parks.
4. Areas sandwiched between higher intensity uses, but not directly served by an arterial.
5. Urban infill areas not appropriate for single family uses but also not capable of supporting higher density uses.

Considerations Against Applying this Designation: Areas to generally be avoided by moderate density residential designations include:

1. Areas surrounded by lower density uses.
2. Areas more appropriate for commercial or higher density uses due to traffic or extensively developed public facilities.
3. Areas within the Region Serving Area designated by this Plan (except as otherwise provided by the Plan).
4. Any areas not planned to be served by water and sewer systems.

Appropriate Implementation: This designation can be implemented by two zones:

- 1) The R-3 - Two-Family (Duplex) Residential District allows single family dwellings and duplexes as permitted uses. Fourplexes, some residential supporting uses, and professional offices are permitted as conditional uses.
- 2) R-MHP Residential Manufactured Home Park District permits the development of manufactured home parks on property that is at least 5 acres in size. The maximum density per unit should be 5,200 square feet.

High Density

Purpose: To provide an opportunity for the location of the most economical forms of housing in areas appropriately situated for such uses under the policies of this Plan.

Description: This category shall be applied to those areas which are either now developed or are reserved for multiple family dwellings. Densities may range from 10 to 20 units per acre. Dwelling types may range from single family units to apartment complexes, and may include manufactured home parks when located adjacent to major arterial streets. Adequate recreation areas should be provided for any development involving more than 10 units. Densities exceeding 20 units per acre and special development standards may be authorized for senior housing projects, within the Downtown area and within 1/4 mile of regional transit service.

Compatible Uses: Compatible uses are similar to those identified under the other residential categories, except higher intensities of use may be

Molly Lawrence

EXHIBIT 19

From: Steven Gross [sgross@auburnwa.gov]
Sent: Thursday, January 29, 2009 11:48 AM
To: Molly Lawrence; Jeff Dixon; Chris Hankins
Cc: Jackson, Douglas; Naiden, Jason
Subject: RE: Final MDNS for Piano Rezone (SEP07-0034)

FILE

Molly,

We agree with your interpretation. Have a good vacation.

Steven L. Gross
Assistant City Attorney
City of Auburn
253.804.5027

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-----Original Message-----

From: Molly Lawrence [mailto:mlawrence@GordonDerr.com]
Sent: Wednesday, January 28, 2009 11:59 AM
To: Jeff Dixon; Chris Hankins
Cc: Steven Gross; Jackson, Douglas; Naiden, Jason
Subject: RE: Final MDNS for Piano Rezone (SEP07-0034)

Thanks Jeff. So just to clarify, that means that when the MDNS condition says we have to meet the provisions of our geotech's report, the City is not saying that we are limited to only the buffers as recounted in the geotech report (based on ACC 16.10.090). Instead, the future developer can request exceptions to those buffers pursuant to ACC 16.10.100 and the City will entertain such requests to the extent we can show we meet ACC 16.10.100. Just taking a belt and suspenders approach here so there is no confusion later. (I just don't want the condition to be misconstrued as limiting our ability to use ACC 16.10.100 in the future.)

Thanks for the clarification.

Molly

From: Jeff Dixon [mailto:jdixon@auburnwa.gov]
Sent: Wednesday, January 28, 2009 11:28 AM
To: Molly Lawrence; Chris Hankins
Cc: Steven Gross; Jackson, Douglas; Naiden, Jason
Subject: RE: Final MDNS for Piano Rezone (SEP07-0034)

Molly,

Thanks for your e-mail. Notwithstanding the information in the Final MDNS, the city is always required to implement its city code.

Thanks,

Jeff Dixon

From: Molly Lawrence [mailto:mlawrence@GordonDerr.com]
Sent: Tuesday, January 27, 2009 12:12 PM
To: Molly Lawrence; Jeff Dixon; Chris Hankins
Cc: Steven Gross; Jackson, Douglas; Naiden, Jason
Subject: RE: Draft MDNS for Piano Rezone (SEP07-0034)

Dear Jeff and Chris,

I haven't heard back from either of you regarding my email below. Can I expect to hear later today (before I leave out of town for two weeks?)

Thanks. Molly

From: Molly Lawrence
Sent: Monday, January 26, 2009 9:32 AM
To: 'Jeff Dixon'; Chris Hankins
Cc: Steven Gross; Jackson, Douglas; Naiden, Jason
Subject: RE: Draft MDNS for Piano Rezone (SEP07-0034)

Thanks Jeff.

We are hoping for one clarification regarding the MDNS. Specifically, in the final version, the City added a new condition requiring "documentation ensuring compliance with the Geotechnical Report prepared by Associated Earth Sciences for the site (dated 4/8/08)." Condition 3. Earlier in the MDNS, the City restates the portion of that AESI report that explains the buffer requirements from ACC 16.10.090.E.4.c. Finding of Fact, 92 We wanted to be certain that these provisions read together were not intended to limit our ability to rely on ACC 16.10.100.E in the future to reduce the standard buffer requirements from ACC

19.10.090.E.4.c. In particular, ACC 19.10.100.E prohibits development on Class IV slopes, but allows development on lesser classified slopes so long as the applicant can meet the criteria set forth in the Code. In discussing this issue with our geotech at AESI, he explained that it was not his intent, by recounting the standard buffer provisions from ACC 19.10.090.E.4.c, to in any way limit our ability to rely on ACC 19.10.100.E in the future, provided we can meet the criteria of ACC 19.10.100.E.

I would appreciate a written response to this email in order to clarify the record. Also, if at all possible, please get back to me by Wednesday. I am leaving for a trip out of the country on Thursday morning, and need to understand before then whether we are all on the same page or perhaps interpreting the AESI report or the City Code differently.

Thanks very much.

Molly A. Lawrence | GordonDerr LLP | 2025 First Avenue, Suite 500, Seattle, WA 98121-3140 |
mlawrence@GordonDerr.com | Phone: 206-382-9540 | Fax: 206-626-0675 | www.GordonDerr.com
<<http://www.gordonderr.com/>>

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From: Jeff Dixon [mailto:jdixon@auburnwa.gov]
Sent: Friday, January 16, 2009 1:52 PM
To: Molly Lawrence; Chris Hankins
Cc: Steven Gross; Jackson, Douglas; Naiden, Jason
Subject: RE: Draft MDNS for Piano Rezone (SEP07-0034)

Molly,

Don't know what the problem was but here is another attempt. Please let me know if this works.

Jeff Dixon

From: Molly Lawrence [mailto:mlawrence@GordonDerr.com]
Sent: Friday, January 16, 2009 8:21 AM
To: Jeff Dixon; Chris Hankins
Cc: Steven Gross; Jackson, Douglas; Naiden, Jason
Subject: RE: Draft MDNS for Piano Rezone (SEP07-0034)

Dear Jeff,

Thanks for your email. When I open the attachment, however, there is not text. Could you try resending it?

Thanks. Molly

From: Jeff Dixon [mailto:jdixon@auburnwa.gov]
Sent: Thursday, January 15, 2009 11:53 AM
To: Molly Lawrence; Chris Hankins
Cc: Steven Gross; Jackson, Douglas; Naiden, Jason
Subject: RE: Draft MDNS for Piano Rezone (SEP07-0034)

Dear Molly,

Thanks for your comments, we have incorporated many of these and proceeded to issue the final decision which is attached. I'm responding for Chris since he is out of the office for the remainder of the week.

Jeff Dixon

From: Molly Lawrence [mailto:mlawrence@GordonDerr.com]
Sent: Thursday, January 15, 2009 6:51 AM
To: Chris Hankins
Cc: Jeff Dixon; Steven Gross; Jackson, Douglas; Naiden, Jason
Subject: RE: Draft MDNS for Piano Rezone (SEP07-0034)

Dear Chris,

I didn't hear from you yesterday, so I thought I would check back in. What is the plan at this point? Have you integrated our comments into a revised document for publication? Please let me know.

Thanks much. Molly

From: Molly Lawrence
Sent: Tuesday, January 13, 2009 6:37 PM
To: 'Chris Hankins'
Cc: Jeff Dixon; Steven Gross; Jackson, Douglas; Naiden, Jason
Subject: RE: Draft MDNS for Piano Rezone (SEP07-0034)

Dear Chris,

Thanks for providing us one last look at the draft MDNS. First, I want to thank you. This is a vast improvement over the last draft and addresses many of our comments and concerns. We do have a few straggler issues, and have attached a redlined versions addressing those issues. Our proposed changes fall into two areas: landslide hazard classification and future visual buffering. With regard to the first issue, we were surprised by the discussion of the landslide hazard classification in the draft MDNS. When we were last on the phone with Cindy in November, she expressly agreed that based on the geotech's reports and recommendations the slopes qualified as Class II. I know that we discussed this quite a bit over the past 6+ months, but that was the final conclusion during our last call on the subject. I have attached my email following the conversation, in which we thanked the City for finally putting this issue to bed. Based on that discussion, we have redlined the SEPA MDNS to state that the slopes are Class II/Moderate Hazard.

With regard to the second issue, I thought it was terrific to see the City referring to specific code sections regarding future land clearing and landscaping activities. That is very consistent with what we would expect. I became confused, however, when I saw the sentence: "The applicant/owner shall be responsible to demonstrate that the existing and supplemented vegetation is suitable for purposes of providing a buffer to minimize potential visual impacts of future site development." The word "suitable" is undefined and open to overbroad interpretation. Rather than relying on words like "suitable," we thought the better approach would be for us to agree not to remove the existing trees on the site between now and the time of a future development application, and then the applicant and City can hash out the visual impacts/buffering at the time an actual development proposal is on the table. Otherwise, we are shooting in the dark at an uncertain target.

Finally, there are a couple of places where I have inserted questions into the text. I used the highlighting feature to denote them. They represent words or phrases that I did not quite understand or that I thought required a bit further clarification.

Please get back to me with your comments/thoughts. We appreciate your willingness to work with us on this.

Molly Lawrence

From: Chris Hankins [mailto:chankins@auburnwa.gov]
Sent: Friday, January 09, 2009 4:52 PM
To: Molly Lawrence
Cc: Jeff Dixon; Steven Gross
Subject: Draft MDNS for Piano Rezone (SEP07-0034)

Hi Molly,

Attached please find the "revised" draft of the MDNS for the Piano Rezone project. If possible can you please review within the next few days and let us know if you have any additional comments. We would like to issue the decision by Wednesday (1/14/09) of next week. Thanks!

Chris Hankins

Transportation Planner/Grants Manager

City of Auburn Public Works Department

25 West Main Street

Auburn, WA 98001

(253) 804-5040 direct

(253) 804-3114 fax

e-mail: chankins@auburnwa.gov

web: <http://www.auburnwa.gov>

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EXHIBIT 20

RECEIVED BY dl
PERMIT CENTER
2009 APR 27 PM 2 18

OGDEN
MURPHY
WALLACE
P.L.L.C.
ATTORNEYS AT LAW

N. Kay Richards
206.447.2231
krichards@omwlaw.com

April 24, 2009

Carolyn Brown
Assistant Planning Secretary
Planning, Building & Community
City of Auburn
25 West Main Street
Auburn, WA 98001-4998

Re: Piano LLC, REZ07-0004 - Order on Reconsideration

Dear Ms. Brown:

At the request of Phil Olbrechts, enclosed are two executed originals of the above-referenced document.

Sincerely,

OGDEN MURPHY WALLACE, P.L.L.C.

N. Kay Richards, Legal Assistant to
Phil A. Olbrechts

/nkr
Enclosures

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BEFORE THE HEARING EXAMINER FOR THE CITY OF AUBURN

Phil Olbrechts, Hearing Examiner

RE: Piano LLC

Rezone
REZ07-0004

ORDER ON RECONSIDERATION

INTRODUCTION

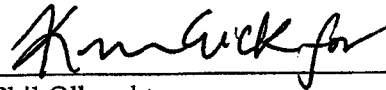
The City of Auburn received a timely Request for Reconsideration from Molly Lawrence, attorney for the applicant, for the above-referenced case on April 13, 2009. The request asserts that the Examiner did not identify some documents entered at the hearing in the exhibit list of the Examiner's recommendation. Specifically, Ms. Lawrence asserts she presented some email exchanges between her and the Auburn's legal staff during the March 25, 2009 hearing on this matter and that these documents were admitted into the record by the Examiner. The Examiner has reviewed his files and confirms that Ms. Lawrence is correct.

ORDER

The following document is added to the Exhibits section of the Examiner's recommendation on the above-captioned matter as follows:

Exhibit 19 Email chain between Steve Goss and Molly Lawrence, ending 1/29/09.

Dated this 24th day of April, 2009.



Phil Olbrechts
City of Auburn Hearing Examiner

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF AUBURN**

2 Phil Olbrechts, Hearing Examiner

3

4 RE: Piano LLC	FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION.
5 Rezone	
6 REZ07-0004	

7 **INTRODUCTION**

8 The applicant has requested a rezone of a 4.75 acre parcel from R1 (single family
9 residential) to R3 (duplex residential). The Examiner recommends approval of the
10 request with a staff-recommended condition.

11 **ORAL TESTIMONY**

12 No one except staff and the applicant testified or were present for the hearing. In
13 response to questions from the Examiner, staff clarified that the geotechnical analysis
14 for the project was subject to peer review. Staff had several meetings with the
15 applicant's geotechnical consultant and the peer-review consultant and both
16 ultimately concluded that the site was a Class II geotechnical hazard and that the
17 intensity of use for the proposed rezone was consistent with this type of hazard.
18 Molly Lawrence, attorney for the applicant, clarified that the comments of the peer-
19 review consultant in Exhibit 12, where the peer-review consultant concluded that the
20 site was not appropriate for a rezone, was based upon the premise that the site was
21 classified as a Class IV geotechnical hazard. Ms. Lawrence stated that the applicant
22 and peer review consultants were in agreement that it was a Class II hazard.

23 Chris Hankins, planning staff, noted that the densities identified in Finding of Fact
24 No. 5 of the staff report were gross densities and not net densities. He also noted that
25 the reference to "Special Plan Area" on the table on page 2 of the staff report should
be "High Density Residential." Mr. Hankins also note that the sentence starting with
"[T]he regulated slopes" at the second-to-last paragraph of Page 6 of the staff report
should be removed as inaccurate.

In response to questions from the Examiner, Mr. Hankins noted that the
comprehensive plan designation for the site has not changed since its annexation into
the City in 2003, when the zoning and comprehensive plan designations were initially
assigned to the project.

Molly Lawrence, attorney for the applicant, noted that the comprehensive plan
designation for the property at the time of annexation was moderate density
residential and that the zoning was R-1. Ms. Lawrence noted that the current zoning

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1 is not consistent with this comprehensive plan and that the proposed rezone is
2 consistent. Consequently, the proposed rezone is necessary to implement the
3 comprehensive plan. Ms. Lawrence also stated that the sentences starting with "[T]he
4 significant slope" and "[T]he environmental constraints" should be stricken from the
5 second-to-last paragraph of Page 6 of the staff report. Ms. Lawrence stated that these
6 sentences overstate the limitations on development created by the geographical
7 hazards of the property.

8 EXHIBITS

9 All exhibits listed in the Exhibit List at Page 2 of the staff report on this application,
10 dated 3/20/09, are admitted. In addition, the following exhibit was admitted during
11 the hearing on this matter:

12 Exhibit 18 Chapter 14 of the Auburn Comprehensive Plan.

13 FINDINGS OF FACT

14 Procedural:

- 15 1. Applicant. The applicant is Piano LLC.
- 16 2. Hearing. The Hearing Examiner conducted a hearing on the application at
17 3:00 p.m. at Auburn City Hall in the Council Chambers on March 25, 2009.

18 Substantive:

- 19 3. Site/Proposal Description. The applicant has applied for the rezoning of a
20 4.75-acre parcel from R-1 (Single-Family Residential) to R-3 (Duplex Residential).
21 The rezone will enable more than twice the currently allowed density. Nothing but
22 single-family residences are allowed in the R-1 zoning district. Single-family
23 residences and duplexes are allowed outright within the R-3 zoning district. Multiple
24 duplexes on a single lot and multi-family residential structures are allowed upon
25 approval of a conditional use permit in the R-3 zoning district. There is no
development proposal associated with this rezone request at this time.

The site is currently vacant with forested areas throughout. It is bordered by Oravetz Road on the west and Lakeland Hills Way on the east. Both roads are classified as minor arterials. The site comprises of a roughly rectangular-shaped parcel, which slopes moderately to steeply upward to the south and east from Oravetz Road Southeast. The central section of the site contains a benched area. From the benched area, the site slopes steeply upwards to Lakeland Hills Way Southeast within northern and central sections and gently upward within the southern sections of the site. The steep slopes along Oravetz Road Southeast are generally inclined at approximately 70-percent grades, while the steep slopes within the central section of the site below Lakeland Hills Way Southeast are inclined at approximately 40- to 60-percent grades.

{PA0724718.DOC;1/00083.900000/}

1 Some localized areas of the slopes above the benched area are inclined at grades of
2 approximately 80 to 90 percent. The slopes along Oravetz Road Southeast and within
the central portion of the site appear to have been modified by past grading activity.

3 4. Characteristics of the Area. The general vicinity of the subject site is
4 characterized as land transitioning from less urban to a more urban development
5 pattern. The Lakeland Hills Planned Unit Development is a few hundred feet to the
6 east. Properties adjacent to the subject site, particularly along the north and east
7 edges, are characterized as developed to higher urban densities that are consistent
with the City of Auburn's zoning and comprehensive plan designations. A high
school and an elementary school are located north and west of the site on the west
side of Oravetz Road.

8 5. Adverse Impacts. The primary issue of concern for the subject property is
9 its steep slopes. As noted by staff, steep-slope issues have undergone extensive
10 review by both the applicant's geotechnical consultant (Associated Earth Sciences,
Inc.) and a peer-review consultant (ZZA-Terracon). The last written documentation
from the peer-review consultant (Exhibit 12) concludes that the proposed rezone

11 may be at odds with the AMC--Specified Prohibition of Class IV Land
12 Slide Hazard Area alteration since development of the site for multi-
13 family housing would [sic] the likely require alteration of the Class IV
Landslide Hazard Areas.

14 However, staff and the applicant's attorney testified that the peer-review consultant
15 has subsequently concluded that the property is not Class IV hazard area, but rather a
16 Class II hazard area and that as such, the proposed rezone is consistent with the
17 geological constraints of the property. This testimony is consistent with the MDNS
18 (Exhibit A) for the project, where it is stated at Page 3 that the peer-review engineer
19 has agreed that the project should be classified as a Class II/Moderate Hazard
20 Landslide Hazard Area. This evolution in the assessment of geological hazard
21 apparently arises from the fact that the original Class IV designation was based solely
upon topographical conditions (the steep slopes at the site), whereas a more in-depth
investigation revealed that the soils and groundwater characteristics of the site
merited a less hazardous designation. Given these factors, the Examiner finds that the
proposed rezone is consistent with the geological constraints of the site.

22 A letter in opposition was also received (Exhibit 14) by Mel Johnson. Mr. Johnson
23 expressed concerns over traffic, visual impact, stormwater and "zoning continuity."
24 Mr. Johnson notes that the Lakeland Hills Way and A Street intersections are already
25 highly congested, and there are already many more areas in Lakeland Hills that are
still to be developed. Staff comment on existing traffic conditions and capacity of the
road network would have been helpful in evaluating this concern. However, the
roads serving this project are arterials and, consequently, no development on the
subject site will be allowed under the Growth Management Act that lowers the level
of service of these arterials below City-adopted standards. Further, as noted in the

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1 staff report, all traffic impacts will be mitigated at the time of development. Given
2 these safeguards, the Examiner finds that transportation will be adequately addressed.

3 As to stormwater, the City has extensive regulations that address stormwater impacts.
4 These regulations prohibit any net increase in discharge of stormwater offsite. The
5 City's existing regulations adequately address stormwater.

6 As to visual impact, there is little that can legally be done to address visual impacts in
7 permit review, given the lack of specific standards to address the situation. However,
8 Condition No. 1 of the MDNS (Exhibit 8) does require the applicant to "minimize"
9 visual impacts as viewed from surrounding parcels in Oravetz Road and Lakeland
10 Hills Way Southeast.

11 As to "zoning continuity," Mr. Johnson argues that there is already sufficient high-
12 density development in the surrounding area. The proximity of other high-density
13 development is actually an argument in favor of the proposed rezone, since this
14 ensures the further compatibility of adjoining use. Also, the Growth Management
15 Act encourages high-density development within urban growth areas such as the City
16 of Auburn.

17 There are no other adverse impacts discernible from the record. The Examiner finds
18 that the proposed rezone will not create any material or significant adverse impacts.

19 CONCLUSIONS OF LAW

20 Procedural:

21 1. Authority of Hearing Examiner. ACC 18.68.030(B)(1)(a) grants the
22 Hearing Examiner with the authority to review and make a recommendation on
23 rezone requests to the City Council if the planning director determines that the rezone
24 requests are consistent with the comprehensive plan. The planning director has
25 determined that the rezone request is consistent with the comprehensive plan. The
Comprehensive Plan Land Use Map designation for the property is Moderate Density
Residential. Page 14-6 of the City of Auburn Comprehensive Plan provides that the
R-3 zone implements this zoning designation.

26 Substantive:

27 2. Zoning Designation. The property is zoned R-1, Single-Family
28 Residential.

29 3. Review Criteria and Application. Chapter 18.68 ACC does not provide
30 any specific review criteria for site specific rezones. However, Washington appellate
31 courts have imposed some criteria themselves, requiring that the proponents of a
rezone must establish that conditions have substantially changed since the original
showing and that the rezone must bear a substantial relationship to the public health,

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1 safety, morals or welfare. See *Ahmann-Yamane, LLC v. Tabler*, 105 Wn. App. 103,
2 111 (2001). However, no change in circumstances is necessary for rezones that
3 implement a comprehensive plan. *Id.* at 112.

4 In this case a change in circumstances is not necessary since the rezone does
5 implement the comprehensive plan. As previously discussed, the current zoning
6 designation for the property is inconsistent with the underlying comprehensive plan
7 designation. The proposed rezone is consistent with the underlying comprehensive
8 plan designation. Even if the changed circumstances criterion did apply, this project
9 would satisfy it by the intense development that has occurred in the surrounding area.

10 As noted in detail in the staff report, the proposed rezone also is consistent with and
11 implements other Comprehensive Plan policies. The site is served by minor arterials,
12 is in an area characterized by high-density development, and is located within an
13 urban growth area. All of these factors support the rezone to a higher density.
14 Further, the City must allow a rezone to either the proposed R-3 district or the R-
15 MHP (Residential Manufactured Home Park District) in order to provide for
16 consistency between the Comprehensive Plan land use map and the zoning map as
17 required by the Growth Management Act ("GMA"), Chapter 36.70A RCW.

18 The project bears a substantial relationship to the public health, safety and welfare. It
19 promotes high density infill development within urban growth areas as encouraged by
20 the GMA. It serves as a transition area to institutional and high-density uses. The
21 density is also compatible with those of the adjoining single family and other uses.

22 DECISION

23 The Hearing Examiner recommends approval of REZ07-0004, subject to the
24 following condition:

25 1. Based on the comments received during the public comment period and
other information submitted with this rezone request, a Final SEPA Mitigated
Determination of Non-Significance (MDNS) was issued by the responsible SEPA
Official on January 14, 2009. The MDNS included three conditions of approval to
mitigate potential impacts of the proposed rezone request. Compliance with these
conditions is required for this rezone to be approved.

Dated this 6th day of April, 2009.



Phil Olbrechts
City of Auburn Hearing Examiner

{PA0724718.DOC;1/00083.900000/}